BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO. 64

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN	)	
(Western Lines)	)	**PARTIES TO THE DISPUTE**
vs.	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM: "1. That CSX Transportation, Inc. make Engineer J. S. Tolley (199251) whole for all time lost as a result of the arbitrary fifteen (15) day suspension from service and for attending the investigation. 2. That Engineer J. S. Tolley (19925251) service record is expunged of all mention of this matter."

FINDINGS:
The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated November 19, 2009, (as amended) that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. As specified in the PLB Agreement establishing this Board, this Award shall be limited to one page and shall not establish precedent nor be referred to by the Parties in the future.

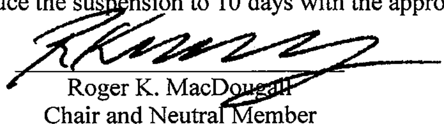
After a thorough review of the record, the Board concludes there are a number of issues to be addressed in this Award: 1) Does the evidence support a lack of timeliness by the Union, making their appeal *void ab initio*?; 2) If not, has the Carrier proven the charges – in summary that the Employee a) failed to operate his equipment in accordance with required speed limits; b) failed to test handbrakes prior to dismounting equipment and leaving it unattended; c) left equipment in the foul of adjacent tracks; d) ran and therefore did not take care in his foot placement; and e) did not complete a locomotive work report for the locomotives in his charge.

1. The agreement specifies that appeals must be presented in writing within 60 days. The Carrier discipline letter was dated June 18, 2010, while the Union appeal letter was dated August 29, 2010, thereby, on their face, supporting the Carrier position that the appeal should be *void ab initio*. However, the appeal rule goes on to say, in Note 1, that a postmark within 60 days will satisfy the 60 day provision. In this case, there was no evidence provided this Board concerning postmarks or like evidence. Earlier correspondence from the Carrier to the Employee and the Union, in this same file, does provide USPS tracking information. For some reason the Discipline letter does not. Even though the Carrier letter may be dated Friday June 18th, what if it, for some reason, was not actually sent until the following Monday, the 21st? If so, since the hearing was held on May 20th the Carrier would have violated the 30 day time limit for issuing the discipline under Article 30.D.1 of the Agreement, making the discipline *void ab initio*. Given the lack of evidence before the Board on this serious issue, I do find that the Carrier has not made out it's case for the Union Appeal being *void ab initio*. Therefore, the Board must turn to the merits of the case.

2 a) It is clear from the record that the Employee did operate his equipment in excess of both the 40 MPH speed limit and the 10 MPH speed limit on the different tracks in question. The download proves it, and is not disputed – the Union simply argues that the overspeed instances were minor in nature and were immediately corrected. However, the download shows that speeds in excess of 40 MPH were recorded at least 6 times, albeit small amounts over. Similarly, the uncontested evidence was that he ran at speeds of 14 MPH in a 10 MPH zone. The Carrier has, in my view, proven it's case with respect to the speed violations. b) No one disputes that the Employee did not tie down the locomotive hand brakes when he left the engine to throw 2 switches. The issue turns on the interpretation of whether the locomotive was "unattended" when left with no qualified employee in the cab at the time. While there may be some ambiguity in the language, and one early letter from the Carrier (December 16, 1992) seems to indicate that throwing a switch immediately in front of a locomotive might be okay without handbrake application, clearly going at least 100 feet away to throw the second switch falls within the meaning of "unattended" based on the evidence before me. Therefore, the Carrier has made out it's case for this Rule violation. c) There is no dispute that the equipment was left foul of the clearance point of the tracks. The Union argued that there was no other equipment around to be put in danger. In the Board's view, that is irrelevant. The equipment was undisputedly left foul, in violation of the Rule. d) The evidence concerning running versus walking fast is contested and difficult to reconcile. On this point, I find that the Carrier has not met it's burden. e) There was no locomotive work report filled out for these locomotives, as required. However, Rule 5309 provides that it must be done for each trip or tour of duty, and include any problems or unusual occurrences and any "non-complying conditions discovered en route". This would be difficult to do while still en route, as the Employee was when the derailment occurred and he was called upon to answer questions. I find that the Carrier has not met it's burden with respect to this portion of the charge.

The Board notes that the Carrier, based on all of the charges above being, in it's view, sustainable, gave this Employee 15 days actual suspension, which is the maximum allowable discipline under their IDPAP for a first Serious Offence. Given that I have found the Carrier has not met it's burden of proof for 2 of the 5 charges, I find this an appropriate case to reduce the suspension to 10 days actual.

AWARD:
The Claim is partially sustained. The Carrier will reduce the suspension to 10 days with the appropriate compensation to be paid to the Employee.



Roger K. MacDougall
Chair and Neutral Member

Dated: July 5, 2011 At: Chicago, IL