

BEFORE  
PUBLIC LAW BOARD NO. 7362  
CASE NO.72

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

**STATEMENT OF CLAIM:**

It is requested that Engineer Jackson be made whole for all time lost while serving the fifteen (15) day actual suspension from September 11, 2010 through September 25, 2010 including all time lost attending the formal investigation on August 11, 2010 with all benefits and seniority rights unimpaired.

**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 that Engineer Jackson was charged with placing his train into emergency due to a train separation without actuating either the independent brake or the two-way telemetry.

The Union raises a preliminary objection based on a failure of the Carrier to produce documents in advance of the hearing. The record shows that Engineer Jackson was charged in a letter dated June 29, 2010. The Union made a request for documents by email on July 16, 2010, asking for documents at least 5 days prior to the hearing. The Carrier responded by regular mail on July 16, stating that the Carrier would “provide all relevant documentation necessary at the investigation and will give all parties ample time to review”. During the course of the investigation, the Union objected to not having received documents in advance and requested 5 days to review the documents presented at the hearing by the Carrier. During the hearing, the investigating officer granted a recess of just over 1 hour for the Union to review the documents.

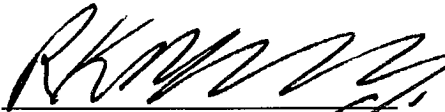
The collective bargaining agreement language in question states (Article 30(B)(4)(f)): “Upon request, the Engineer and his representative(s) will be provided sufficient time to review any documents produced during the discipline hearing. An Engineer or his representative(s) may request in writing and will receive available documents to review prior to the investigation...” [emphasis added]

Thus, unlike many other agreements in this industry, the parties have bargained for a 2-part disclosure process. Not only does the hearing officer have to provide sufficient time for documentary review during the course of the hearing (which is common in the industry), but the Carrier must also provide available documents for review prior to the investigation if so requested in writing.

What the parties have bargained, an arbitrator has no jurisdiction to alter. Even though the hearing officer granted time during the hearing for document review (the sufficiency thereof, this Board has no need to rule upon), the Carrier’s failure prior to the hearing goes to the heart of the document production to which they have agreed. The Carrier did not argue that 5 days was too much, nor that they did not have the documents in question in their possession or control, nor that they were irrelevant. They simply denied the Union’s rightful demand. They did so at their peril and violated the Union’s due process rights for which they had bargained. In the circumstances, the Board has no need to review the merits of the case.

**AWARD**

The Claim is sustained.

  
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**Roger K. MacDougall**  
**Chair and Neutral Member**  
At: Chicago, IL

Dated: July 5, 2011