

**BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO.94**

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

STATEMENT OF CLAIM:

Claim on behalf of Engineer G Wise (199416) requesting compensation for all time lost during the thirty (30) day actual suspension, compensation for time lost attending the investigation, with the Claimant to be made whole for all benefits and contractual entitlements such as vacation, performance awards and bonuses, and that all mention of this matter be expunged from the Claimant's record.

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 Wise was charged with failing to announce by radio when stopped on the main track and also failing to sound the horn when passing roadway workers.


The Union raises a preliminary objection based on the Carrier first agreeing to a postponement of the investigation hearing in this matter, then proceeding with it as originally scheduled.

The Board finds that the incident in question occurred on April 20, 2011. The Carrier sent a Notice of Investigation on April 27, 2011, scheduling the Investigation for May 6, 2011. On April 23, 2011, the Local Chairman of the Organization wrote to the Carrier by email, saying that he has spoken with the Trainmaster (who was later the Carrier Investigating Officer) and requested a postponement until May 10, 2011. This was due to his vacation scheduled from April 30 through May 7, 2011. The record shows that the Carrier confirmed this postponement by return email on Monday, April 25, 2011. On May 5, 2011 at 16:30 hours, while the Local Chairman was on vacation, the Carrier notified the Vice-Local Chairman that the hearing would proceed as scheduled, the following morning. It did so. At the outset of the Investigation, the Vice-Local Chairman objected to the Investigation proceeding, due to not being prepared to proceed and stating that there had been an agreed-upon postponement. When asked by the Investigating Officer if the Organization had submitted a postponement request, the Vice-Local Chairman said that he did not know. The Conducting Officer therefore overruled the objection and continued with the Investigation.

It seems to this Board that there must have been a miscommunication within the Carrier's organization. The Organization requested and was granted a reasonable postponement, as provided for in the Collective Bargaining Agreement. It seems that the Conducting Officer was not so advised. He proceeded with the Investigation. The Carrier did so at its peril and violated the Organization's due process rights for which it had bargained. The Board finds that this was a violation of the right of the employee to a fair and impartial investigation. In the circumstances, the Board has no need to review the merits of the case.

AWARD

The Claim is sustained.


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

Dated: 6/19/2012