

**BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO.96**

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

STATEMENT OF CLAIM:

"Claim on behalf of Conductor J.M. Mongold (233427) requesting compensation for all time lost during the seven (7) day actual suspension, compensation for time lost attending the investigation, with 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 shall 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 Conductor Mongold was charged with failing to initiate an emergency radio transmission on April 1, 2011, when his train went into emergency. After an agreed-upon postponement, an investigation was held on April 26, 2011. Conductor Mongold was assessed a 7 day suspension on May 26, 2011, for violation of Operating Rule 90.

In the Rule in question specifies that "when a train is moving and emergency application of the brakes occurs, crew members must immediately initiate an emergency radio transmission, in the manner of the following example:..." (emphasis added). The issue in this case turns on whether, in fact, the train was moving at the time of the emergency application of brakes. No locomotive download was obtained. However, the Engineer filled out a CSX Engineer Separation Report indicating that the locomotive was moving at 1.2 mph when it went into emergency. Further, when the Engineer was questioned during the investigation about why he did not make the emergency call, he said "I forgot".


The Organization says that the Claimant stated that he wasn't sure if the locomotive was moving at the time of the emergency brake application. They say that the Engineer's report might contain errors. They say that without a download, the Carrier has not met its burden of proof. Further, they say, if this Board finds that the Carrier has met its burden of proof, the Claimant should never have been charged under the "Serious" provision of the Carriers policy. This specific violation is not listed as one of the serious offenses. They say that if the Carrier intended it to be considered a serious violation, they should not be able to rely simply on the all – encompassing statement that "Other incidents may also be considered Serious depending on the circumstances."

The Carrier says that the Engineer admitted that the train was moving at the time of the brake application. He also admitted that he forgot to make the appropriate radio call. They say that this proves the offense. With respect to their IDPAP, this is a Serious offense.

This Board finds that the Carrier has met its burden of proof in this case. The Claimant is guilty of the offense as charged. While this specific offense is not listed as a "Serious" one, this Board finds that it is not unreasonable to be included, given the other examples of Serious incidents.

AWARD

The Claim is denied.


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

Dated: 6/19/2012