

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated November 23, 2009, Jerry Ramsey, Manager System Production Teams, notified S. A. Blankenship (“the Claimant”) to attend a formal Investigation on December 2, 2009, at the CSX headquarters building in Jacksonville, Florida, “to determine the facts and place your responsibility, if any, in connection with information I received on November 11, 2009 in connection with an incident that occurred around 0900 hours on November 2, 2009, while you were operating CSX Fuel Truck (396006) as Vehicle Operator on the 6XR2. More specifically, the truck you were operating struck the rear of another CSX vehicle that was driving ahead of you.” The letter stated that in connection with the incident the Claimant was “charged with failure to properly and safely perform the responsibilities of your position, failure to control your vehicle, carelessness, as well as possible violations of, but not limited to, CSX Transportation Operating Rules - General Rule A, General Regulations GR-2 and GR5, as well as, General Safety Rule GS-24.” The Investigation was subsequently rescheduled to January 24, 2011.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

1 The carrier or carriers and the employee or employees involved in this dispute are

respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, S. A. Blankenship, is a Vehicle Operator for the Carrier with a service date of May 27, 2007. On November 2, 2009, the Claimant was assigned to operate a fuel truck. After a job briefing, the R2 bus, a log loader material truck, and the fuel truck headed for the job site. As they drove on a narrow mountain road in West Virginia, with a steep grade, the brakes on the Claimant's truck began to smoke. The driver of the vehicle behind him radioed the information to the Claimant that his brakes were smoking. The Claimant pushed down on the brake pedal, and it went to the floor with no braking ability. The Claimant radioed to the operator of the log loader truck ahead of him that his brakes had failed and to brace for a collision. The Claimant crashed into the truck before him at a speed of about 20 mph. The log loader was traveling at about 15 mph. The operator of the log loader traveled an additional 150 yards with the fuel truck hugging the rear of the log truck and was able to bring both trucks to a halt.

Jerry Ramsey, Manager System Production Teams, took statements on November 2 shortly after the incident from both the Claimant and the log truck operator. The Claimant gave the following statement:

I Scott Blankenship was driving the R-2 fuel truck on Nov. 2nd and at 0900 AM was involved in a vehicle accident.

I was following behind the log truck keeping a safe distance of about 200 ft. We were traveling down a very steep mountain with very sharp turns so I was traveling at a safe speed of between 15-20 mph. As I was approaching the bottom of the mountain foreman Jim Borland called me on the radio and asked if my breaks [sic] were smoking. At that time I pressed the brakes and they went right to the floor. I tried to stop but couldn't. I warned the driver in the log truck to brace himself I lost my brakes. At that time I approached the rear of the log truck and

slammed into to his rear. After that the log truck guided my truck to a stop.

The driver of the log truck gave the following statement.

Date: 11/02/09

I was traveling with several CSX employees on R-2 Rail tran. I was in the material truck by myself. The fuel truck was behind me. No one was immediately in front of me. I heard Mr. Blankenship say over the radio that he lost his brakes and told me to hold on. Then I felt him hit me from behind. I then proceeded to hit my brakes to help bring his truck to a stop. When he hit me I felt a sharp pain in my neck, back, and shoulder area. I declined immediate medical attention, but requested to see a doctor sometime today or sooner if the pain got worse. At the time of accident I was traveling about 15 mph.

Both the Claimant and the log truck operator were transported to a nearby hospital. The Claimant was diagnosed with a back strain, prescribed a pain reliever, and placed on light duty until November 5, 2009. The other truck operator was diagnosed with an upper back strain and a right wrist sprain; was prescribed medication, and placed on light duty until November 4, 2009.

After the Claimant's truck was towed in, Mr. Ramsey testified, as part of his investigation he looked for the pre-trip inspection book but could not find it. The garage to which the truck was towed found that the brake linings were worn excessively. Mr. Ramsey received a note from the garage which stated, "Attached is an inspection sheet showing the condition of the brakes in unit #396006. Both of the linings on the rear axle were 0/32nds. The linings are riveted on and they were worn into the rivets which means there was no measurement left and no lining left."

Mr. Ramsey testified that he spoke with the mechanic who did the inspection at the garage, who told him that the "it was down to the rivets. There was no lining left. And the adjusters were not properly adjusted and were not working – the self adjusters."

The date of the accident, November 2, 2009, was a Monday. The previous

workday for the Claimant was October 29, 2009. His truck, vehicle #39606, was not used between October 29th and November 2nd. On October 29th, the Claimant had used the same Driver's Vehicle Inspection Report form for both his pre-trip and post-trip inspections. This is clear from the fact that he inserted two times on the form: 0645 A.M. and 1830 P.M. Johnny Ray Sorensen, Manager Work Equipment for the Carrier since 1996, testified that the form used by the Claimant on October 29th is supposed to be used only for post-trip inspections. The Claimant had placed an "x" in the box to indicate that CONDITION OF THE ABOVE VEHICLE IS SATISFACTORY and signed the form with his signature.

The form that is supposed to be filled out for a pre-trip inspection is called CSXT Daily Vehicle Inspection Form. There are four separate kinds of inspection listed on the form which the operator is required to make, numbered as follows: 1. Walk Around Inspection; 2. Start Up Check; 3. Operational Check; 4. Other. There are eight separate items listed that must be checked in performing the Operational Check: Brakes, Parking Brake, Headlights/taillights; Strobe light; Horn/Backup Alarm; Unusual Noises; Windshield/Windows; and Windshield Wipers. A note at the top of the form states "Items marked with an * noted as 'Unsatisfactory' must be corrected before use." For each item checked the operator must insert in a box after the item an "S" for Satisfactory, a "U" for Unsatisfactory, and "NA" for Not Applicable. There is an "*" after the word "Brakes" on the form. There is no credible evidence that the Claimant filled out a correct pre-trip inspection form for October 29, 2009 or for November 2, 2009.

The Claimant filled out a Driver's Vehicle Inspection Report for November 2, 2009. He put the date on the form and the time of 0750 A.M. The form lists various parts and systems of the vehicle, such as Air Compressor; Air Lines; Battery; Brake

Accessories; Brakes, Parking; Brakes, Service; etc. on the form, with a box in front of each part listed. The operator is supposed to "CHECK ANY DEFECTIVE ITEM AND GIVE DETAILS UNDER 'REMARKS.'" The Claimant did not check any item on the list but placed an "x" in the box for CONDITION OF THE ABOVE VEHICLE IS SATISFACTORY.

Mr. Ramsey testified that by not doing a pre-trip inspection, including inspection of the brakes, the Claimant violated General Rule A, which requires that employees "obey rules and special instructions that relate to their duties." He violated General Regulations GR-2, Mr. Ramsey stated, which says that ". . . Employees must not: . . . 5. Willfully neglect their duty, 6. Endanger life or property, . . ." in that failure to inspect the brakes is a willful neglect of duty and endangered life and property. The Claimant violated General Regulations GR-5, which requires an employee to "exercise care and economy in the use of railroad property," Mr. Ramsey testified, since the fuel truck under the Claimant's care was totaled in the accident. GS-24, Mr. Ramsey noted, states that "Before riding in or operating a motor vehicle, to the extent possible, inspect the vehicle's equipment and safety devices for unsafe conditions. If any of the vehicle's equipment or safety devices are unsafe: Do not ride in the vehicle. Remove the vehicle from service, if it is under your charge." The fuel truck was under the Claimant's charge, Mr. Ramsey testified, did not have brakes on it, and it was determined that the rule was violated.

On cross-examination Mr. Ramsey acknowledged that the incident occurred on a very narrow mountainous road with a very steep grade. General Rule A was violated, Mr. Ramsey stated on cross-examination, in that the Claimant did not follow the special instruction to fill out a daily pre-trip inspection form on his vehicle. Mr. Ramsey acknowledged on cross-examination that the post-accident report from the garage on the

condition of the brakes on the Claimant's truck did not state what the condition of the brakes was prior to his driving his truck down the mountain.

The Organization introduced into evidence the CSX Transportation G025 Vehicle Inspection and Driving Safety Rules and Procedures. The document stated as follows regarding vehicle inspection.

II Vehicle Inspection:

- A. The necessity to perform motor vehicle inspections has been identified in many sources. Pre-operation vehicle inspections are required on all CSXT owned/leased vehicles.
- B. The specific inspection requirements and documentation vary with vehicle type and weight. All vehicle operators are required to perform the daily pre-trip walk around inspection of their vehicle. Vehicles weighing more than 10,000 lbs. also require a post trip inspection report pursuant to Federal Commercial Vehicle Regulations. The vehicle pre-trip inspection report is found on page 5 of this document. . . .
- . . .
- D. A copy of the current inspection form shall be maintained in the vehicle for seven calendar days following the date of inspection.

The fuel truck that the Claimant drove in this case weighed approximately 14,000 pounds (Tr. 67). The G025 document provided as follows with regard to the driver's responsibility for a truck of that weight:

III. Driver Credential and Responsibilities

* * *

B. For CSX vehicles with gross weight between 10,001 pounds and 26,000 pounds (>10,000lb and < 26,001 lb GW), the driver must:

- I. Have a valid driver's license
- ii. Have a current medical certification
- iii. Carry current vehicle registration and proof of insurance card
- iv. Perform a daily walk around inspection and complete the daily inspection form
- v. Complete a driver's daily logbook of hours driven
- vi. Perform a daily post trip inspection and complete the post trip inspection form
- vii. CSX DOT E-7991 Fusee Exemption letter (if fusees are on board)

Mr. Ramsey was asked on cross-examination if he had any information in regard to the Claimant's performing a daily walk around inspection as required by the CSX policy. He answered, "No, I just couldn't find the documents." On redirect examination Mr. Ramsey testified that the Claimant did not use the vehicle inspection form found on page 5 of CSX's G025 policy on Vehicle Inspection and Driving Safety. His conclusion that the Claimant did not do the vehicle inspection provided for on page 5 of the G025 policy document, Mr. Ramsey stated on recross-examination, was based on the fact that he could not find the documentation that he did such an inspection.

Johnny Ray Sorensen, Manager Work Equipment since 1996, testified that his duties include managing the maintenance of work equipment and some training of commercial motor vehicle drivers in his department. The conducting officer of the hearing asked Mr. Sorensen, "Can you tell me what CSX's requirements are in regard to

the inspection of brakes?" He answered that CSX requires two inspections, a pre-trip and a post-trip inspection. The pre-trip inspection of brakes, he explained, "is checking the adjustment, doing a parking brake test, service brake test, and a down test on each one of the brake systems." For the adjustment test, he stated, "You actually have to crawl underneath the vehicle and with the . . . air built up, parking brakes released, pull on the slack adjuster to check the free travel on it." If there is one inch of free travel on the slack adjuster, Mr. Sorensen stated, a DOT [Department of Transportation] officer will stop you and make you adjust the brakes. Mr. Sorensen also explained how the other pre-trip brake inspection tests are performed. The form reproduced on page 5 of the G025 Vehicle Inspection document, Mr. Sorensen testified, is used to document the pre-trip inspection. The DOT, Mr. Sorensen clarified, does not require documentation of pre-trip inspections, only post-trip inspections; CSX requires documentation of both pre-trip and post-trip inspections.

The conducting officer asked Mr. Sorensen the following question, "[I]s it possible that a Vehicle Operator inspects the brakes in the morning and they pass his inspection, when we look at the adjustment and the parking and the service and leak test, and . . . as an operator progresses down a grade of that nature that his brakes wear out – to meet these 0/32" rear brake readings?" He answered, "You shouldn't see that kind of wear in a short period of time, no."

On cross-examination Mr. Sorensen testified that from passing a DOT inspection to the time that brakes wear down would be a very extended period of time. Mr. Sorensen was asked by the Claimant how far back, in terms of days or months, would he say that the brakes probably needed to be replaced if they were worn down to the degree shown in the post-accident inspection. He answered, "You can't set a set time that these would

wear. . . . [T]o wear this thin does take an extended time. But this driving terrain that you're driving in, whether it's mountainous, whether it's flat – all this has to be taken into consideration. There is no set period other than . . . brakes don't fail immediately. It's a wearing process. . . .”

The Claimant persisted and asked Mr. Sorensen, in his professional opinion, how long did he think that the brakes were out of specification. Mr. Sorensen stated that he could not give a date, that it depended on the driving terrain, but that CSX has an outside mechanic do a DOT annual inspection of the vehicle (not merely the brakes) and that from the time that it is done, the rule is that the vehicle should be able to perform its services for a full year before there is any major defect based on wear.

Mr. Sorensen was asked on cross-examination if he had any documentation to show that the Claimant had been trained to perform the brake inspections he described. He answered, “I don't have any documentation. But he would have passed a DOT exam for a Commercial Motor Vehicle driver.” You would be expected to be able to do this as part of your pre-trip inspection, Mr. Sorensen testified. The Claimant's Organization representative asked Mr. Sorensen if he had any idea whether the Claimant was trained in using the CSX pre-inspection form and the DOT post-inspection form. Mr. Sorensen answered, “I have no idea that he'd been trained that way. As we talked earlier, we have two different forms. We do one for AM, or one for the pre-trip that we document. And as stated earlier, the DOT requires the post-trip, which is what this is.” The pre-trip and the post-trip inspections, Mr. Sorensen testified, are basically the same. (Tr. 54).

Scott Allen Blankenship, the Claimant herein, testified that he has been a Vehicle Operator for approximately three years. His assignment on November 2, 2009, he stated, was to drive to the job site and refuel machinery as needed. Asked by the conducting

officer if he took exception to any of the testimony, the Claimant stated that he took exception to the testimony that he did not do a proper vehicle inspection. He did do a vehicle inspection, he testified, and documented it with the inspection form dated 11-2-09 and showing a time of 0750 A.M. that was introduced into evidence. This was the form, he testified, that he was taught to use for his pre-trip inspection when he got his CMV [Commercial Motor Vehicle] license from the state of New York.

The conducting officer asked the Claimant if he performed the four different pre-trip brake tests that Mr. Sorensen outlined in his testimony. He answered "Yes." The conducting officer asked, "You performed the adjustment test?" He answered, "I did a visual inspection of the slack adjusters." The conducting officer came back, "Did you pull like Mr. Sorensen stated on the adjuster to see how much play there was." The Claimant replied, "I'm not qualified to get underneath there as a mechanic to pull on any slack adjusters." In response to additional questions the Claimant testified that he did the parking test, the service test, and the leak test. The conducting officer then asked, "So you're telling me you did not do the adjustment test?" The Claimant stated, "I did a visual inspection of the slack adjusters." The conducting officer persisted, "I understand you did a visual inspection. But did you perform the adjustment test?" The Claimant replied, "No, I was told to do a visual inspection."

The conducting officer directed the Claimant's attention to the pre-inspection test form that appears on page 5 of the G025 vehicle inspection document and asked him, "And did you complete this form the day of the incident – 11/2/09?" The Claimant answered, "Yes, I believe I did." Asked if he could provide a copy, the Claimant stated, "Not at the moment. I would have to look for it if I have it." The Claimant testified that he is familiar with the form, "I fill them out, every line."

The conducting officer then asked the Claimant how he could “determine how much adjustment there is with a visual inspection.” The Claimant answered, “It was in spec – about three quarters of an inch.” The conducting officer continued, “And how can you tell that without pulling on the adjuster?” The Claimant stated, “I can just tell by visually looking at it.”

In reply to questioning by his Organization representative, the Claimant testified that he uses the same form for his pre- and post-trip inspections; that he indicates this on the form by putting the different times for each inspection on the form. He has always been trained, the Claimant stated, to use that inspection form for both inspection reports.

He had been driving the vehicle prior to November 2, 2009, for ten or 11 months, the Claimant stated. On November 2, prior to the accident, he testified, he had been driving the vehicle for approximately an hour in mountainous terrain. As he was going down the mountain, the Claimant stated, Jim Borland came over the radio and told him that his “brakes were smoking really bad.” According to the Claimant, he smelled the brakes, and he pushed the brake pedal, and it went down to the floor.

In addition to filling out the inspection form on which he entered the 0750 time, the Claimant testified, he filled out the daily inspection form that is reproduced on page 5 of the G025 vehicle inspection document. The Claimant identified a book of inspection forms for vehicle No. 396006 that were dated from July 19, 2009, through September 20, 2009, that were signed and filled out by the Claimant. The Claimant denied that he violated any of the rules that he was charged with violating

The Organization gave a closing statement on behalf of the Claimant. It asserts that the Claimant performed all of the duties that were required of him by CSX. Regarding the form used for the inspections, the Organization argues, the Claimant used

the forms he was trained to use. Although the Claimant ran his truck into another truck, the Organization states, he did so in a defensive move where he had no other reasonable alternative after his brakes failed.

Regarding the issue of inspections, the Organization contended several times during the hearing that the charging letter did not mention anything about an inspection form and that raising the issue at the hearing was a violation of Rule 25(d) of the collective bargaining agreement, which requires that an employee “accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused. . . .” In addition, the Organization argues, there was nothing on the form used by the Claimant that said it could not be used as a pre-trip inspection report. The Organization cites the Claimant’s testimony that he was trained to use the same form for both pre-trip and post-trip inspections. The Organization further notes that the Claimant testified that he fills out the CSX daily inspection report, and asserts that no one knows what happened to the booklet that contains the Claimant’s report for November 2, 2009. The Organization contends that the Claimant “did not violate any rules here that the Carrier has provided any documentation for through the charge letter notice. He was charged specifically for driving into the back of another vehicle on 11/2/09,” the Organization asserts, “and that is it.”

Following the close of the hearing, by letter dated February 4, 2011, the Assistant Chief Engineer System Production Teams notified the Claimant of the Carrier’s determination that the evidence presented was sufficient to substantiate the charges against him. Objections made at the hearing, the letter stated, were “appropriately responded to in accordance with your contractual due process rights.” The letter declared that there was sufficient proof that the Claimant was “guilty as charged” and that his

conduct was “in violation of the cited CSX Transportation Rules – General Rule A and GR-2, GR-5 as well as CSX Safe Way Rule GS-24.” The Assistant Chief Engineer stated that “it is my decision that the discipline to be assessed is forty-five (45) day actual suspension, starting February 5, 2011 continuing up to, and including March 21, 2011, with March 22, 2011 being your first day back to work.”

The Board does not agree with the procedural objection raised by the Organization, namely, that the issues relating to the performance of a pre-trip inspection by the Claimant were outside the scope of the charge letter and therefore could not properly be considered in the hearing on the charges. The charge letter stated that in connection with the November 2, 2009, collision, the Claimant was “charged with failure to properly and safely perform the responsibilities of [his] position. . . .” Safe performance of a Vehicle Operator’s position includes, among other responsibilities, the requirement that he conduct a pre-trip inspection of his vehicle. Without properly inspecting his vehicle, a driver could not know whether it was safe to operate the vehicle. It therefore should have been apparent to the Claimant that an investigation of whether he safely performed the responsibilities of his position in connection with an incident involving a collision caused by the failure of his vehicle’s brakes could include an inquiry into whether he properly inspected the brakes prior to the trip. The Board finds that it was proper for the Carrier to address the issue of a pre-trip inspection in connection with the trip on which the collision happened.

Mr. Sorensen testified that vehicles undergo an annual DOT inspection which is supposed to assure that vehicles will be fit for operation until the next annual inspection.

Problems will invariably develop with vehicles through operation over a period of time, however, and for the safety of the driver, other employees, and the public, federal law and the Carrier's own policies require that trucks that go onto the road be inspected both before and after each trip. By his own testimony, however, the Claimant does not perform as part of his pre-trip or post-trip inspections a physical (as opposed to visual) slack adjuster test by pulling on the slack adjuster to check if there is free travel on it. That test is designed to show whether a vehicle's brakes are in adjustment. By failing to perform the slack adjuster test on his vehicle on November 2, 2009, the Claimant could not tell, and did not know, whether or not the brakes on his vehicle were in adjustment.

The Claimant testified that he did a visual inspection, explaining that he was "not qualified to do an adjustment." (Tr. 58). He also testified, "I'm not qualified to get underneath there as a mechanic to pull on any slack adjusters." (Tr. 57). The conducting officer asked the Claimant, "Mr. Blankenship, when you got your CDL license in the State of New York, were you asked to perform the adjustment test?" He answered, "No, I was told to do a visual inspection." (Tr. 58).

The Claimant's testimony was directly contradicted by the testimony of Manager of Work Equipment Sorensen who has been in his position since 1996 and whose duties include the annual training of the Carrier's CMV drivers. He testified that brake adjustment is tested by, among other things, crawling underneath the vehicle and pulling on the slack adjuster to check the free travel on it. According to his testimony, if there is an inch or more of travel on the slack adjuster, the brakes are considered out of adjustment. (Tr. 42-43). He further testified that it is a federal requirement that in order to obtain a commercial motor vehicle license you must be able to describe how to do a pre-trip brake inspection of the kind detailed in his testimony. (Tr. 53-54).

Mr. Sorensen impressed this Board as an honest, forthright witness. For example, although it would have been in the Carrier's interest for him to state that the rear brake linings could not have been worn down to the metal during a single trip, he did not do so. He testified that you can't set a time wherein the linings will wear down; that it depends on the kind of terrain, whether it is mountainous, city or highway traffic, and on the driver. Mr. Sorensen did not have a stake in the outcome of this case. He did not supervise the Claimant and played no part in his discipline. He was a disinterested witness.

The Claimant was not a disinterested witness since he was the charged employee. In addition, he gave testimony on a material point that was not credible. He stated that he was not qualified to get underneath the vehicle as a mechanic to pull on any slack adjusters. That simply was not accurate. Mr. Sorensen described the test for checking brake adjustment, and it is not something that requires any special mechanical skill to perform. There was no testimony that Vehicle Operators are also required to adjust the brakes if they are out of adjustment, only that they test to make sure that the brakes are in adjustment.

It is unpleasant to crawl under a vehicle and may even be dangerous if the proper precautions are not taken to make sure that the vehicle will not move while the driver is under it. But the test is not something that an operator who is not also a mechanic cannot reasonably be expected to do. If it were, it is not likely that the ability to do the test would be one of the requirements to obtain a CDL, as Mr. Sorensen credibly testified is the case.

The Claimant was asked by the conducting officer, "Mr. Blankenship, when you . . . visually looked at the adjuster, how would you determine how much adjustment there is

with a visual inspection.?” He answered, “It was in spec – about three quarters of an inch.” The conducting officer followed up, “And how can you tell that without pulling on the adjuster?” The Claimant answered, “I can just tell by visually looking at it.” The Claimant gave no explanation of how a visual inspection can reveal the amount of play in the slack adjuster – three-quarters of an inch according to the Claimant’s testimony. This Board cannot understand how a visual inspection would show the amount of play in the slack adjuster. The Claimant’s testimony does not seem credible to this Board, and it is contradicted by the testimony of Manager Sorensen, who has expertise in such matters. The Board finds that there was substantial evidence for the Carrier to credit the testimony of Manager Sorensen on this point and to discredit the testimony of the Claimant.

The fact that the Claimant did not do the slack adjuster test means that there is no evidence that the brakes on his fuel truck were in adjustment on the date of the accident. Since it was the Claimant’s responsibility to test for adjustment, it is appropriate to place the burden on him to show that the brakes were in adjustment. That consideration plus the fact that, according to Manager Sorensen’s credible testimony, it is unusual to see brake linings worn down to bare metal between annual DOT inspections of the vehicle, that “from passing a DOT [annual] inspection to the time it wears down would be a very extended length of time,” provided substantial evidence for the Carrier to conclude that the fuel truck was not in a safe condition to be driven at the time that the Claimant took it on the road on the date of the incident. He was therefore properly charged with culpability in connection with the accident. The Board so finds.

The Board also believes that there is substantial evidence that the Claimant failed to fill out a proper pre-inspection report on November 2, 2009. The fact that the Claimant filled out the proper form from July 19, 2009, through September 20, 2009, shows that he

knew what the correct form was to fill out for a pre-trip inspection. His testimony that he believed he filled out the form on November 2, 2009, is acknowledgment by him that he was supposed to fill out the form that day. However, the Claimant gave no explanation why he would have filled out two separate forms on the same day for a pre-trip inspection. It is not disputed that he filled out a post-trip form for November 2, 2009, but entered a time of 0750 A.M. on the form to indicate that it was his pre-trip inspection report. Why then would he fill out a second pre-trip report for that day? There is no evidence that he ever filled out more than one pre-trip inspection report during the July 19 - September 20, 2009, period. The facts that it does not make sense that the Claimant would have filled out two pre-trip inspection forms for the same day and that the correct form for November 2nd was never found lead this Board to find that the Claimant did not complete the proper pre-trip vehicle inspection report for November 2, 2009. The fact that the Claimant was not careful to complete the correct pre-trip inspection report for that date is consistent with his lack of care to perform all of the required pre-inspection tests on that date.

The Board will next consider whether the assessment of a 45 day suspension was proper discipline in this case. The Claimant's hire date was May 27, 2007. Discipline was assessed against the Claimant by letter dated February 4, 2011, almost four years after his date of hire. Except for the present incident, there is not the slightest blemish on the Claimant's record for his entire period of employment. The incident here involved is properly classified as a "serious offense" under the Individual Development & Personal Accountability Policy. It meets the definition of a serious offense in the IDPAP – Serious Offenses table, which includes in the definition "All rule infractions that result in a derailment, or damages to equipment, or a personal injury" and "At-fault vehicle

accidents involving one of these criteria: . . . B) Bodily injury with immediate medical treatment away from the scene C) Disabling damage to any motor vehicle requiring tow away.”

The progression provided in the IDPAP for a first serious offense is “Time Out with up to 5 days overhead record suspension.” The Carrier has provided no reason why greater discipline should be imposed in this case. The provisions of the IDPAP are a sufficient basis for finding that the 45 day suspension assessed as discipline in this case was excessive and in violation of the provisions of the Carrier’s own IDPAP. The Board so finds. The Carrier is directed to reduce the discipline in this case to a Time-Out with five days’ overhead record suspension to remain in effect for a period of one year from the date of notice of discipline. The Claimant is to be made whole for any loss in wages or benefits as a result of the assessment of greater discipline in this case.

The Board also deems it appropriate to raise an additional issue which is often considered in determining the appropriate degree of discipline. Manager Sorensen, whose duties include annual training of CMV drivers, was asked on cross-examination whether the Claimant was trained with regard to pre-trip and post-trip inspection reports. He answered, “I have no idea that he’d been trained that way. . . .” (Tr. 52). According to the Claimant’s testimony, despite being a Vehicle Operator for three years, he has never performed a slack adjuster test. The testimonies of both witnesses bring into serious question whether the Carrier’s training program for Vehicle Operators includes instruction in how to fully and properly perform pre-trip and post-trip inspections. The Organization stressed the question of training both in its examination and cross-examination of witnesses and its closing statement in behalf of the Claimant.

In regard to training, the Board takes arbitral notice of Department of

Transportation Guide No. DOT 14 entitled Commercial Motor Vehicles: Pre-Trip and Post-Trip Inspection Requirements, which contains the following provisions:

* * *

Training Requirements

Although the regulations do not specify training requirements, drivers should be trained on pre-trip and post-trip vehicle inspection requirements and DVIR requirements in connection with hazmat employee function specific training.

Maintenance and Review

Managers and supervisors can promote compliance efforts by conducting spot-checks of driver vehicle inspections and routine reviews of DVIRs.

* * *

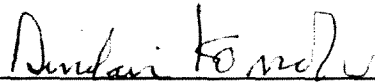
Even, however, if the Carrier has not provided training to the Claimant in how to perform a slack adjuster test, discipline at the first step of the progression for serious offenses was appropriate in the present case because, by virtue of his having obtained a CD license, he was aware that a proper pre-trip inspection includes performance of the slack adjuster test. In fact, he did not deny that he was required to perform the test, but claimed that he could do it visually. That testimony was contradicted by Manager Sorensen and not credited by the Board. Generally, however, whether an employee has been provided appropriate training for the duties and responsibilities of his or her position is an element to be considered in determining whether there are mitigating elements in a disciplinary situation.

A W A R D

Claim sustained in accordance with the findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the date the signed Award is transmitted to the parties.

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", is written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 6, 2011