

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 102
Employee: P. Dillow

Neutral Member: Barbara Zausner
Carrier Member: Robert A. Paszta
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The discipline [removed from service beginning on October 22, 2009 and the November 24, 2009 letter assessing a thirty (30) day actual suspension concluding at the close of business on December 4, 2009 and the immediate removal of his bridge tender seniority (07/16/02) from the appropriate rosters] imposed upon Mr. P. Dillow, Jr. for alleged violation of CSX Transportation Operation Rules – General Rules A and F, General Regulations GR-2(5); GR-3(3); GR-6; GR-14; GR-16 and CSXT Safeway General Safety Rule GS-1 in connection with damage sustained to Bear Creek Swing Bridge, Sparrows Point Branch, MP BAL 5.4, Bridge 5, Dundalk, MD, on October 21, 2009 was arbitrary, capricious, unwarranted and in violation of the Agreement. (System File D70877809/2009-055347)
- 2- The Agreement was further violated when the Carrier failed to provide copies of the transcript of November 10, 2009 hearing to Mr. P. Dillow and his union representative as required by Rule 25(f).
- 3- As a consequence of the violation referenced in Parts (1) and/or (2) above, Claimant P. Dillow, Jr. shall now have this discipline removed from his record and compensated for all time lost, as well

as have all other rights and benefits restored that may have been lost, as a result of this removal from service and discipline.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant was charged with failing to inspect the bridge as required and failing to report or correct a hazardous condition. The Carrier alleges he failed to notice damage to the bridge and failed to report the damage for days. The Carrier maintains the Claimant's due process rights were fully protected and the hearing was fair and impartial.

In response to the Organization's procedural objections, the Carrier maintains the charge is "reasonably exact considering the Claimant's job exclusively involved operating the Bear Creek Swing Bridge." Its failure to provide a copy of the transcript with the discipline letter is not a fatal flaw. Once it learned of the oversight, the Carrier sent the transcripts to the parties. The Carrier cites awards that stand for the proposition that "technical violations are insufficient to nullify an entire disciplinary proceeding absent a specific provision to this effect."

The Organization argues that the claim should be sustained in light of the Carrier's failure to provide the Claimant with a transcript of the hearing along with the disciplinary letter within the time limits of the

rule. The charge letter finding the Claimant guilty as charged is dated November 24, 2009 and was mailed certified mail, return receipt requested. The letter concludes, "a copy of the transcript will be sent to you under separate cover." On December 8, the Organization requested a copy of the transcript, claiming it had not yet received one. On December 11, more than twenty days had passed and the Organization notified the Carrier that it was in violation of Rule 25(f). The Carrier denied the claim by letter dated February 8, 2010 but provided no proof that it had sent a copy of the transcript to the Organization or the Claimant.

Rule 25 (f) provides, "Notice of discipline must be given within twenty (20) days following the close of the hearing. Copy of the transcript shall be given to the employee and two (2) to his representative." The Organization maintains the claim must be allowed as presented in light of the Carrier's egregious violation and in order to protect the integrity of the Agreement. Even if the Carrier mailed copies of the transcript on December 15, it would not be in compliance with the rule. By the time a transcript was received, the Claimant "had already long since exhausted his on-property appeals concerning his discipline..."

For reasons argued by the Organization, a majority of the Board concludes that the Carrier violated the Agreement when it did not timely provide the Claimant with a copy of the hearing transcript. The

Organization offers numerous arbitration decisions holding that “when time limits are breached the discipline must be set aside.” Directly on point is NRAB Third Division Award 3736, “When such decision is rendered and action taken thereon ... it then becomes important for the party affected and his representative to have a complete and correct transcript of the proceedings upon which such decision is based in order that they may determine what action ... they should take.” “The absence of either or both” violates the claimant’s [due process] rights.” The holding in Award 18150 is similar.

In another similar matter, (Award 2, PLB 7115) the Carrier’s failure to provide a transcript in time for the Organization and Claimant to fashion an appeal denied the Claimant’s due process rights and warranted overturning the Carrier’s decision.

AWARD

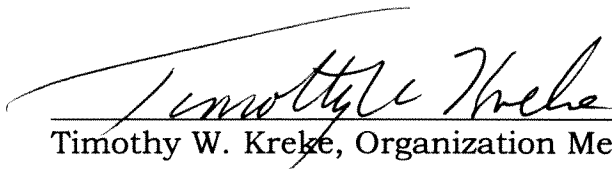
Claim sustained.

A handwritten signature in cursive script, reading "Barbara Zausner".

Barbara Zausner, Neutral Board Member
January 11, 2012

A handwritten signature in cursive script, reading "Robert A. Paszta".

Robert A. Paszta, Carrier Member

A handwritten signature in cursive script, reading "Timothy W. Kreke".

Timothy W. Kreke, Organization Member