

PUBLIC LAW BOARD NO. 7529

Case No. 3
Award No. 3
CSXT No. 2012-114542
BMWED No. D70912511

Brotherhood of Maintenance of Way

and

CSX Transportation, Inc.

Statement of Claim:

“Enclosed please find Mr. Rick’s request for expedited handling as provided in Appendix (N) Expedited Discipline Agreement of the June 1, 1999 BMWED/CSXT Agreement.”

Findings and Award:

The Carrier and Employee involved herein are Carrier and Employee as defined in the Railway Labor Act, as amended. This Board has jurisdiction over this matter.

A. Procedural Objections:

Before addressing the merits of this case, the Board must address two procedural issues raised by the Organization. The Organization requested that documents, including the accident report, be produced in advance of the hearing. The accident report as well as other relevant documents were produced at the hearing. The Organization also requested that the machine operator involved in the incident be produced to testify. Even assuming there was an obligation to answer the Organization’s request for documents prior to the hearing and the calling of a witness at the hearing, the Organization has failed to show how it was prejudiced by Carrier’s failure to do so. Accordingly, these procedural objections are found to be lacking in merit.

B. Merits:

On July 27, 2011, Claimant MT Ricks (ID No. 227311) was working as a fuel truck operator. Claimant drove his truck near a ballast regulator in order to refuel it. Operating Rule 727 defines the Red Zone for on-track equipment as fifteen (15) feet in front or behind the equipment and ten (10) feet beyond any extended portion of the equipment. Before entering the Red Zone of the ballast regulator, Claimant advised its operator that he would be refueling and would be in the Red Zone. He told the operator that he needed to move the machine closer because his hose would not reach it. The operator moved the ballast regulator closer, got off it, and asked Claimant whether that was good. When Claimant said “yes”, the operator returned to the machine.

Generally, the proper procedure for fueling a regulator is to shut the machine down and secure it from moving. However, mechanics and foreman have instructed operators not to shut down machines on the main line because of concern that machines could not be restarted, particularly if it had a history of problems starting, which the ballast regulator involved herein had.

The ballast regulator was on the main line and the operator did not shut it down. Claimant had no discussion with the operator about shutting down the equipment before he entered the Red Zone to refuel. He also did not discuss whether the operator had secured the hydraulic system. Claimant assumed that the operator had done so and thereby had prevented the machine's wing from inadvertently being activated.

Claimant entered the Red Zone to begin refueling. When the operator returned to the ballast regulator, he mistakenly activated the wing. He had failed to deactivate the hydraulic system. Claimant was then pinned between the wing of the ballast regulator and the steps of the regulator.

Carrier charged Claimant with violation of a number of rules including General Rule A requiring employees to obey rules and special instructions; Rule GR-2 requiring employees not to endanger life or property; GR-3 requiring employees to render every assistance to other employees in carrying out and functioning under rules and instructions; GR-14 requiring employees observing any condition that could endanger another person to either correct or report it; Rule 700 requiring a job briefing; Rule 727 establishing communication requirements before entering a Red Zone; GS-3 defining the steps to complete a job briefing, and GS-4 requiring that employees warn other employees of unsafe acts and hazards.

The application of each of these rules to this situation turns on whether Claimant had a proper job briefing with the machine operator and communicated with him to establish safe procedures before entering the Red Zone. GS-2 states that a job briefing needs to be conducted before beginning a work activity and defines the steps of a job briefing as follows:

- Discuss the sequence of events;
- Identify, eliminate, contain or communicate all potential hazards related to the job;
- Inspect tools and equipment before use;
- Identify proper PPE for job task;
- Ensure understanding of planned sequence of events, and
- Follow up to ensure compliance with safe work practices.

Rule 727 requires that roadway workers must not enter a machine's Red Zone "without first communicating with the operator to establish safe work procedures."

While Claimant did communicate with the operator and let him know in advance that he would be entering the Red Zone, he did not discuss with the operator either deactivating the hydraulics or shutting the machine down. He also failed to discuss the sequence of job steps or how to eliminate or contain potential hazards.

Notwithstanding, Claimant maintained that he complied with all rules. He testified that to his knowledge fuel truck drivers never conducted job briefings with machine operators, and that consistent with the generally accepted practices at the work location, he was required only to advise the operator that he would be in the Red Zone. Another truck driver with fifteen (15) years' experience corroborated Claimant on this point. Claimant also testified that there was, in his view, no need to discuss securing the hydraulic system with the operator because an experienced operator would understand that it was his responsibility to do so.

However, the rules cited herein do not permit Claimant to have made such an assumption. He was required to have discussed the safety procedures established before commencing the work activity. Simply advising the operator that he was about to enter the Red Zone does not meet this standard.

Even assuming that the practice at the involved location was generally not to have job briefings or safety communications between the driver and machine operator, as Claimant maintained, such a practice does not excuse his failure to follow applicable rules. At most, such practices might be mitigating circumstances to be considered in establishing the appropriate penalty for rules violations. However, it appears that Carrier did take into account all relevant factors when it imposed a penalty of ten (10) days overhead suspension. This penalty, under the circumstances of this case, is neither harsh nor excessive.

Accordingly, the record in this case establishes that there was compliance with the applicable agreement, substantial evidence was adduced at the hearing to prove the charges, and the discipline assessed was appropriate.

Award:

Claim denied.

Dated: May 23, 2012



Mitchell M. Kraus
Referee