

PUBLIC LAW BOARD NO. 7529

Case No. 6
Award No. 6
CSX File No. 2012-124789

Brotherhood of Maintenance of Way Employee Division
of the International Brotherhood of Teamsters

and

CSX Transportation, Inc.

Statement of Claim:

“... Claimant M. Woods shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”

Findings and Opinion:

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.

On March 22, 2012, Claimant Matthew Woods (ID No. 234136) and other members of his crew were replacing two (2) rails approximately 120 feet long. Roadmaster Allen Sperry instructed Claimant to spike every fifth or seventh tie because a Q train, which has a high priority, was scheduled to pass over that track. In order to permit the crew time to work on the track, its departure time had been pushed back.

Sperry's Testimony

Sperry testified that five (5) minutes after giving this instruction, he returned to the area where Claimant was working and saw that he was spiking every tie. When he asked Claimant why he had failed to spike every five (5) to seven (7) ties, the latter replied that he had to carry the hammer the same amount of distance either way and so he decided to just spike each tie. The hammer being used by Claimant was a hydraulic one weighing at least 70 pounds.

Sperry repeated that it was urgent that the track be ready to allow the Q train to pass, but Claimant stated that it wouldn't take much longer to spike every tie. Sperry again instructed Claimant to do what he was told, and the latter said OK. Claimant moved down five (5) to seven (7) ties, spiked one tie and “threw” or “pushed” the hydraulic hammer down to the ground.

Sperry then instructed Claimant to pick up the hydraulic hammer, give it to another employee, and go sit in the truck carrying the hydraulic equipment. Five (5) or six (6) minutes later, Sperry saw Claimant outside of the truck. Sperry asked why he was outside and Claimant responded to smoke a cigarette. Sperry then instructed him to stop smoking, get back into the

truck, and not leave the truck unless there was an emergency. If Claimant needed anything, Sperry told him to use the radio to contact him or someone else.

Claimant responded that he was not going to get back into the truck. He was beginning to become confrontational, and his voice was “boisterous” and “intimidating”. Sperry told Claimant that he had five (5) seconds to get into the truck and the latter said no. Sperry then said that if Claimant didn’t get into the truck, he would charge him. Claimant stepped closer to Sperry and screamed loudly in his face, “charge me.” Sperry then turned toward the truck, telling Claimant to follow him. Claimant did so and Sperry then drove to an office.

Claimant’s Testimony

Claimant testified that he initially did not comply with the instruction to spike every five (5) to seven (7) ties because of habit, since he normally spiked every tie. After he had spiked five (5) to ten (10) ties, Sperry returned and reminded Claimant of his prior instruction and Claimant then complied. Claimant denied throwing down the hydraulic hammer. Rather, when he picked up the hammer and proceeded to the next tie, he had reached the full length of the hoses attaching the hammer to the truck. With the hose fully stretched the hammer pulled back toward the truck, causing Claimant to lose his balance. Claimant maintains that he then dropped the hammer to prevent himself from falling.

After going to the truck, Claimant stepped out to smoke. When Sperry asked him why he left the truck, Claimant said to smoke. Sperry told him that he did not need to smoke and to return to the truck. Claimant did not do so. Sperry then pointed his hand at Claimant’s face and said that he had five (5) seconds to return to the truck or be charged. Claimant did not return to the truck even though twice instructed to do so because Sperry was in his path and was very angry. He did not attempt to take a different route to the truck by walking around a backhoe, which was parked nearby. Claimant would have been required to initially walk in the opposite direction from the truck, and he feared that Sperry would become infuriated if he did so.

Claimant denied telling Sperry to charge him, but confirmed that when he did not return to the truck, the latter turned toward it, instructing Claimant to get into the truck with him. Claimant did as instructed and drove with Sperry to an office.

Analysis

While Sperry’s and Claimant’s description of these events differ in material respects, there is no dispute about two (2) matters. First, Claimant did not spike every five (5) to seven (7) ties as instructed. Claimant maintains that he did not purposefully fail to do so, but simply acted out of habit. This explanation, however, is not consistent with the fact that he failed to follow a specific instruction within five (5) minutes of receiving it. When confronted about his failure to follow this instruction, Claimant did not offer habit as an explanation of his conduct. Rather, he stated that he had to carry the hammer the same distance, so he decided to spike every tie, and that doing so would not take that much longer. In short, Claimant decided to substitute his opinion for Sperry’s instructions.

Second, there is no dispute that Claimant did not return to the truck even though he was instructed to do so. His excuse was that Sperry was angry and blocking the path to the truck. Even assuming Sperry was angry, his anger does not provide Claimant an excuse for failing to follow instructions. Assuming Sperry was blocking his path, Claimant did not ask Sperry to step aside in order to permit him to pass or attempt to take an alternate route to the truck.

General Rule A requires employees to obey special instructions that relate to their duties. In failing to spike every five (5) to seven (7) ties and to return to his truck as instructed, Claimant violated this rule.

Sperry and Claimant had markedly differing descriptions of their discussion about the latter returning to the truck. Sperry testified that Claimant stepped toward him and "screamed" in his face to charge him. He characterized Claimant's voice as "boisterous" and "intimidating".

Claimant denied making this statement as well as being boisterous. He testified that Sperry pointed and shook his hand in Claimant's face. He characterized Sperry's tone as "violent".

GR-2 requires employees to behave in a "civil and courteous manner" to each other and to refrain from the use of "boisterous" language. The Organization argues that the Carrier failed to meet its burden of proof because an employee may not be found guilty on the uncorroborated testimony of one witness. Carrier, to the contrary, urges that the Hearing Officer resolved the conflict in testimony by making a credibility determination in favor of Sperry, and that determination should not be disturbed by this Board.

It is not the function of this Board to substitute its judgment, where there is a conflict in testimony, for that of the Hearing Officer, provided there is substantial evidence to support the result of the hearing. In the instant matter, noting that Claimant had repeatedly refused to follow simple instructions, the Hearing Officer's decision to credit Sperry's testimony meets this test.

Accordingly, the Carrier established by substantial evidence that Claimant had violated General Rule A and GR-2. Under the circumstances of this case, the penalty of ten (10) days actual suspension and twenty (20) days overhead suspension for a period of one year is neither harsh nor arbitrary.

Award:

Claim denied.

October 22, 2012

Date

Mitchell M. Kraus

Mitchell M. Kraus
Referee