

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 7, (Case No. 7)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION- IBT RAIL CONFERENCE
(Organization File: D70149412)**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2012-125647)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Paszta, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged J. Thomas with violation of Operating Rules - General Rule A, General Regulations GR-2, 104-B, On-Track Worker Rules and Qualifications- Rule 720 and CSX Safeway Rule GS-3 and was substantial evidence adduced at the Investigation on May 22, 2012, to prove the charges; and was the discipline assessed in the form of permanent dismissal warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the discipline.

The Board has thoroughly reviewed the record and will first address the Organization's procedural argument. It argued the Claimant was denied a "fair and impartial" Investigation because Claimant was suspended prior to the Hearing. As previously stated in Award No. 1 of this Board countless arbitral tribunals have found that the Carrier has a right to withhold an employee from service prior to a Hearing in serious matters. The charges brought against the Claimant were of a serious nature and the Carrier did not violate the Agreement when it held the Claimant out of service prior to his Investigation. It is determined that the Carrier complied with Rule 25 of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

On May 2, 2012, Claimant was directed to attend a formal Investigation on May 21, 2012, which was mutually postponed until May 22, 2012, concerning in pertinent part the following charge:

"...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1120 hours, on April 23, 2012 at or

near mile post S 761.5, on the Wildwood Subdivision in the vicinity of Wildwood, FL. It is alleged that you failed short of complying with CSX corporate rules and policies on April 23, 2012, while operating Tamper number #MT 20056, you ran through a power switch at mile post S 761.5 without visually determining that the switch was properly lined. Additionally, on April 24, 2012, you failed to follow the instructions of your foreman to stop at the SAS dwarf signal at mile post S 761.5 and wait for further instructions. It is alleged that you trammed 1.4 miles beyond the signal.

In connection with the above incident, you are charged with failure to properly perform the responsibilities of your position and possible violations of, but not limited to, CSXT Operating Rules - General Rule A; General Regulations GR-2, 104-B; On-Track Worker Rules and Qualifications- Rule 720; as well as CSX Safeway Rule GS-3."

On June 8, 2012, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of permanent dismissal. On June 12, 2012, the Claimant requested expedited handling of his case as provided for in Appendix (N) Expedited Discipline Agreement of June 1, 1999 BMW/CSXT Agreement.

The facts indicate that on April 23 and 24, 2012, Claimant failed to follow directives and instructions while operating Tamper Number MT 20056. On pages 21 and 82 of the transcript the Claimant was questioned about the operation of that machine on both dates as follows:

"Palleschi: And were you operating that machine on April 23, 2012...

Thomas: Yes sir.

Palleschi: ...at Mile Post S 761.5?

Thomas: Yes, sir.

Palleschi: And did you run through a power switch at Mile Post S 761.5 with that machine?

Thomas: Yes, sir.

Palleschi: And did you run through that switch without visually determining the switch was properly lined?

Thomas: Yes sir.

Palleschi: On April 24, 2012, did you fail to follow the instructions of your Foreman and stop at the SAS dwarf signal at Mile Post S 761.5?

Thomas: No sir.

Palleschi: Did you allegedly tram 1.4 miles beyond that signal?

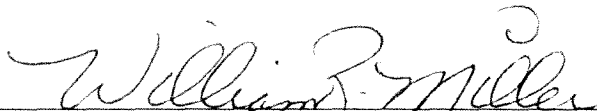
Thomas: Yes sir. (*Underlining Board's emphasis*)

The record is clear that the Claimant was operating a Ballast Tamper when he ran through a switch without visually determining that switch was properly lined on April 23rd. The switch was damaged and took nearly 49 man-hours to replace, along with a cost of approximately \$3,650.00 for parts. The following day, April 24th, Claimant operated the same machine. On that occasion the Claimant proceeded nearly a mile and a half without proper authorization. Claimant asserted in the first incident that the Foreman had told him that all the switches were properly lined and in the second incident he suggested that the instructions were unclear, but after review of all testimony and written statements neither argument is persuasive. It is determined that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. The Claimant committed serious infractions and the Board does not excuse his behavior, but finds and holds that the discipline was excessive and is reduced to a suspension. The Claimant is to be reinstated to service with seniority intact and all other rights unimpaired with no back-pay. The Claimant is also forewarned that upon reinstatement he should diligently adhere to all Carrier Rules and instructions as mistakes in the field can have catastrophic results.

AWARD

Appeal partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Referee

Dated: August 17, 2012