

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 61

STATEMENT OF CLAIM:

Appeal of the thirty-day actual suspension (time served) issued to Claimant A. J. Gerakis as a result of investigation held on July 26, 2005, in regards to Claimant's failure to properly follow Carrier Operating Rules, Safety Rules, and Procedures resulting in damage to Carrier property, specifically Regulator BR9832 and Locomotives CSXT8105 and CSXT7366

FINDINGS:

The Claimant was employed by the Carrier as an 'A' Operator at the time of this claim.

On June 23, 2005, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in regards to an incident that occurred on the 5KCT CAT Surfacing Unit on June 8, 2005, on the Indianapolis Line Subdivision near Milepost Q1191.3 at West Ansonia, Ohio. The Carrier notified the Claimant that as a result of his failure to follow Carrier Operating Rules, Safety Rules, and Procedures, Carrier property was damaged by Train Q34907, specifically Regulator BR9832 and Locomotives CSXT8105 and CSXT7366.

After one postponement, the hearing took place on July 26, 2005. On August 11, 2005, the Carrier notified the Claimant that he had been found guilty of

all charges and was being assessed discipline of a thirty-day actual suspension (time served), which began on June 9, 2005, and ended on July 8, 2005.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was sufficiently responsible with respect to an incident that occurred on the 5KCT CAT Surfacing Unit on June 8, 2005, on the Indianapolis Line Subdivision near Milepost QI19 1.3 at West Ansonia, Ohio. There is no question that there was a regulator, BR9832, working in the Claimant's Workgroup that was struck by Train Q34907 that caused damage to the regulator and two locomotives. However, a thorough review of the transcript of the investigation involving the Claimant reveals that there is simply insufficient evidence to **connect** the Claimant to any responsibility for that incident.

It is fundamental that the Carrier has the burden of proof in cases of this kind. It is not enough to prove that an incident occurred; it must be shown that the Claimant violated certain Carrier rules or, in some way, failed to take the proper precautions and thereby caused the incident in question. In this case, the Carrier has failed to make that connection, or nexus, and, therefore, this Board holds that there is an insufficient basis to support the thirty-day suspension that was issued to the Claimant.

Therefore, this Board must find that because of the Carrier's failure to meet

its burden of proof, the claim must be sustained. The suspension shall be removed from the Claimant's record and he shall be made whole.

AWARD:

The claim is sustained



PETER R. MEYERS
Neutral Member

Dated: 5/6/06