

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 13

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The thirty (30) day suspension assessed Foreman S. K. Dixon for his alleged failure to give an updated job briefing on February 12, 2003, which resulted in a rail being lifted and causing damage to a wayside Ssgnal and Company vehicle, was without just and sufficient cause and based on an unproven charge.
2. Foreman S. K. Dixon shall now be compensated for all wage loss suffered and have his record cleared of the incident.

Facts

On February 12, 2003, Claimant was assigned as a foreman in charge of Rail Change Out Gang 5FE9. Gang 5FE9 consisted of the foreman, boom truck operator and two trackmen. They were assisted by three welders, a welder helper and a signalman when they were assigned to replace an insulated joint, which was part of a 39 foot section of rail that was delivered to the work site by the boom truck operator M. McBryde. Before the rail was unloaded, Claimant Dixon held a job briefing with his gang. After the 39 foot rail section was unloaded from the boom truck and placed on the ground, it was determined that the rail would have to be turned before it could be installed in the track

structure. At that point, and without further consultation with Claimant or any crew member, McBryde raised the rail approximately 15 feet in the air without a tag line. He promptly lost control of the swaying rail, which struck the wayside signal and the occupied welding truck that was nearby.

By letter dated February 21, 2003, Claimant was charged with:

...failure as Foreman on force 5FE9 to give an updated job briefing on February 12, 2003 which resulted in a rail being lifted by the rail change out truck without warning that struck and damaged a wayside signal along with CSX vehicle 75230 causing substantial damage and endangering all those at that location. This occurred on the Monroe Subdivision near MP SF 291.0 at approximately 13:00 hours. (Carrier's Ex. A-1)

Following an investigation that was held on March 6, 2003, Claimant was found guilty of violating CSXT Safe Way Rule 1(b), which reads, "Job briefings are conducted prior to work activity and subsequently when activity changes." The Organization appealed the Carrier's decision by letter dated April 7, 2003. Thereafter, the claim was timely and properly processed at all stages of appeal up to and including the Carrier's highest appellate officer. The dispute was not resolved and was therefore submitted to this Board for determination.

Contentions of the Carrier

The Carrier contends that based on a fair and impartial hearing, Claimant was properly found to have failed to provide the crew of 5FE9 with an updated job briefing. This job briefing was absolutely required before any attempt was made to lift into place the new section of rail. Claimant was in charge of the "rail change out" project, and

therefore it was his responsibility to make certain that Boom Operator McBryde fully understood what was expected of him in regard to moving the 39 foot section of rail.

This was particularly important, argues the Carrier, because Claimant knew that McBryde was an inexperienced crane operator. Nevertheless, by his own admission, Claimant assumed that McBryde knew how to turn and lift a rail. Therefore, he never instructed McBryde about using a tag line or about keeping the raised section of track below knee level. The Carrier argues that the accident could have been avoided if Claimant had conducted a second job briefing, explaining to the entire crew how the large section of track was to be secured, lifted, and spun into place.

The Carrier further submits that the 30-day actual suspension imposed on Claimant was fully justified because of the damage to its equipment and the danger to which employees were exposed.

Contentions of the Organization

The Organization contends that Claimant Dixon performed his duties "in his usual proficient manner," and was not responsible for the accident. He gave a job briefing to his crew, but McBryde "took it upon himself to raise the rail approximately 15 feet in the air without a tag line or assistance from anyone in the gang." (Organization's Submission, p, 2) In the Organization's view, McBryde operated on his own and moved the rail before Claimant could update the job briefing. But even assuming, *arguendo*, that Claimant bore some responsibility for the incident, the Organization contends that there still was no justification for the severity of the discipline. Claimant had an excellent work record and was respected by both his co-workers and supervisors.

Findings

It is undisputed that Claimant held a job briefing with his crew at the outset of the assignment. There is also no disagreement that everyone on that crew understood as soon as the 39 foot section of rail was delivered that it was going to have to be turned. In fact, 5FE9 gang Vehicle Operator Thomas Schmidt testified that there was a job briefing when the crew first arrived on the scene, and "we realized that [the rail] was going to have to be spun." (Carrier Ex. B-43.).

The Carrier imposed stringent discipline on Claimant and held him fully responsible for the incident. Specifically, Roadmaster Ricky Johnson testified that Claimant told McBryde he had to spin the rail, but did not provide "the details about how to spin it." (Carrier Ex. B-12) However, Johnson also testified that there was no doubt in his mind that McBryde knew he was supposed to use a tag line and was not supposed to lift the rail over his head. Likewise, Claimant was entitled to believe that McBryde, as the boom operator, knew at least the fundamental aspects of his job. Once Claimant held the job briefing, it was McBryde's responsibility as much as Claimant's duty to act responsibly and in accordance with standard operating rules.

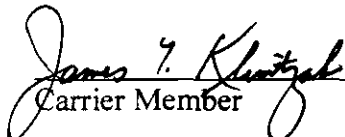
While the Carrier claims that Claimant had a special responsibility to instruct McBryde because he was inexperienced, it is also clear that Claimant had expressed concerns to Johnson about McBryde's skill level prior to February 12, 2003. Johnson, in fact, conceded that Claimant had come to him prior to the incident and had reported that McBryde "was not picking up the operation of the truck very well and...he did not know the controls of the crane truck." (Carrier Ex. B-19) Given McBryde's inexperience and

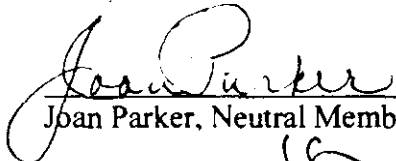
failure to seek any guidance before hoisting the lengthy rail section beyond his control, this Board believes it was unreasonable and unfair for the Carrier to hold Claimant fully responsible for the incident. Undisputedly, Claimant had a good work record. Perhaps he erred in not reminding McBryde about what he should have known, and what Johnson testified McBryde absolutely had to know, about using a tag line and not lifting the rail above knee level. However, Claimant did hold a job briefing. He had no reason to assume that thereafter McBryde was going to act on his own, deviate from standard procedure, and attempt to lift a 39 foot section of rail over his head without applying a tag line. Claimant's failure to closely watch and instruct McBryde was a mistake, but it did not warrant a 30-day suspension.

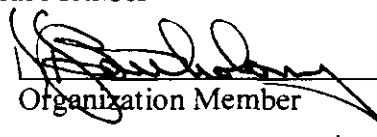
For all of the foregoing reasons, this Board has concluded that Claimant's discipline was unduly severe. His 30-day actual suspension is hereby reduced to a two-week actual suspension.

Award

The claim is sustained in part. Claimant's 30-day suspension is hereby reduced to a two-week suspension. He shall be made whole for the loss of two weeks' pay at the appropriate contractual rate, and his record shall be corrected to reflect this modification of penalty.


Carrier Member
Dated: February 17, 2004


Joan Parker, Neutral Member


Organization Member
Dated: 2-17-04