

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 24

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day actual suspension] imposed on Mr. L. Roberson in connection with alleged violation of CSXT Safe Way Rule E/M-16, Personal Protective Equipment Section E and F.R.A. Bridge Worker Safety Standard Section 214.103 on July 23, 2001 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.
- (2) As a consequence of the violation referred to in Part (1) above, '...it is now respectfully requested that the charge letter of July 30, 2001, and all matter relative thereto, be removed from Mr. Roberson's personal file and he be made whole for all losses suffered as a result of Carrier's actions.'

Background

This case involves a 30-day suspension that was imposed on Claimant L. Roberson, a bridge mechanic. On July 23, 2001, Claimant and two co-workers were performing full-scale repairs on the St. Mary's River Bridge. Claimant was assigned the duty of handing down tools to the men working under the bridge span and notifying them when a train was coming.

At some point in the afternoon, a train was to be cleared through the bridge. Ron Foster, Regional Engineer of Track, was on board that train, and he noticed that Claimant was standing on a floor beam outside the exterior rail of No. 1 track, leaning against one

of the steel columns in the truss bridge as the train passed. Claimant was not wearing a life vest; nor had he secured himself to the bridge with a fall harness.

By letter dated July 30, 2001, Claimant was informed that a formal investigation would be held on August 10, 2001 concerning his failure to wear required fall protection while working on the bridge. On August 28, 2001, the Carrier notified Claimant that based on the testimony and evidence presented at the hearing, he was found guilty of the charges and was being assessed a 30-day suspension.

The Organization appealed the discipline by letter dated September 19, 2001. Conference was held on March 12, 2002, and the appeal was denied on April 8, 2002. Thereafter, the matter was referred to this Board for adjudication.

Opinion

It is undisputed that Claimant was afforded a full and fair hearing in accordance with the Collective Bargaining Agreement. He was given timely and proper notice of the charges, time to prepare a defense, and opportunity to produce and examine witnesses and evidence.

As to the merits, the facts are undisputed. Claimant acknowledged that on the day in question, he was working on the St. Mary's River Bridge; that at some point he was on the No. 1 track field side of the rail, leaning up against the steel column; and that he was not using fall protection.

The Organization contends that Claimant should not have been charged because (1) under the applicable rules, his assigned duties that day did not require him to use fall protection; (2) Claimant was clear and protected in Track No. 1 for the movement of

trains in Track No. 2; and (3) the rules at issue pertain to an employee *working or engaged in work*, and while the train was passing, Claimant was not working or engaged in work.

None of the Organization's contentions has merit. Manifestly, Claimant was working and engaged in work. He was performing an assigned duty of clearing for and inspecting a passing train. The Carrier's pay records verified that he was receiving pay on July 23, 2001. Indeed, it is undisputed that he was on the clock at the time of the incident. In short, anytime an employee is working on a bridge, he is engaged in work and subject to the Carrier's safety rules.

With respect to the contention that Claimant was fully protected because he was in a guarded walkway, the testimony revealed that there was no walkway on the No. 1 Track on the St. Mary's Bridge. The only walkway that is outside the running rails is on the No. 2 Track, on the east side. Claimant, however, was not in No. 1 Track, but was outside the track, on the west side. Bridge Worker Safety Standard 214.103 provides that in order to be protected, an employee must be working exclusively between the rails. But given Claimant's position, the height of the bridge, and the full-scale repairs being performed, he had an absolute obligation to use fall protection.

Furthermore, Claimant candidly admitted that he should have been secured to the bridge with fall protection. As he acknowledged:

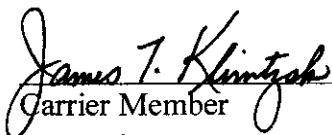
...But really I shouldn't of [sic] stepped on the outside of the rail to move the band, because I know I didn't have on fall protection and I didn't have my life jacket on either because I had took it off just before the train came because I was standing in the clear. (Carrier's Ex. B, at 22.)

Thus, there is no doubt that Claimant was aware of the safety rule and the fact that failure to use either a life jacket or safety harness was a violation of that rule.

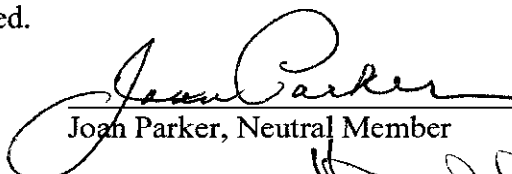
In light of Claimant's testimony, this Board finds that the Carrier has sustained its burden of proof. Moreover, the discipline imposed was neither arbitrary nor capricious. While Claimant was a 20-year employee, his lengthy service did not give him license to ignore important and legitimate safety rules. Additionally, the evidence in the Record demonstrates that the Carrier did not single out Claimant for unduly harsh discipline. The 30-day suspension imposed on him was consistent with discipline assessed against other employees who have committed similar safety infractions. The Carrier has a major concern for safety. Therefore, it did not abuse its managerial discretion in imposing a 30-day suspension for Claimant's very dangerous conduct in standing on a bridge, unprotected and on the field side of a rail while a train passed.

Award

The claim is denied.


Carrier Member

Dated: July 13, 2004


Joan Parker, Neutral Member


Organization Member

Dated: 7-13-04