

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION, INC.**

**Case No. 59**

**Statement of Claim:**

Appeal of a thirty-day actual suspension (June 3, 2005 through July 2, 2005) assessed vehicle operator Timothy D. Atkins, ID# 621024.

**Background:**

Claimant T. D. Atkins was hired by a predecessor of the Carrier on April 4, 1977. In June 2005,<sup>1</sup> Claimant was a vehicle operator assigned to a bus driver position. On June 2, he was assigned temporarily to operate an on-track mobile Knox Kershaw Anchor Cart ("quality cart") on System Curve Patch Team 6XC4, because the regular operator of the cart was absent. Claimant had previously operated the machine, and was qualified to operate it. The quality cart is used to grind rail, and has two modes of control. It can be operated from an onboard console ("travel mode"), or it can be operated by remote control located at the rear of the machine ("work mode").

On the day in question, Claimant trammed the quality cart to Quinnimont, West Virginia, near mile post 377, where some in-track welds had been performed. He arrived at approximately 9:00 a.m., and traveled in reverse to put the cart in place. Claimant then changed from travel mode to work mode, dismounted from the machine, and attempted to

---

<sup>1</sup> All dates hereafter are 2005 unless otherwise stated.

operate the cart in work mode. However, when Claimant pressed the control to move the cart forward, it instead moved in reverse, and Claimant's subsequent attempt to activate the machine's brakes failed. Claimant tried to board the machine to stop its movement from the onboard console, but was unsuccessful. The cart collided with a third-party hi-rail truck, causing \$3,000 in damage.

By letter dated June 3, the Carrier instructed Claimant to attend a formal investigation:

to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on the 6XC4 System Curve Patch Team on June 2, 2005, on the New River Subdivision at near Milepost CA 377.5 at Quinnimont, West Virginia. On this date at approximately 0900 hours, the quality cart RACR200306 that you were operating struck a stopped hi-rail truck. You are charged with failure to properly control your machine in violation with[sic], but not limited to CSX Operating Rule[sic] 720 and 727.

Carrier Operating Rule 720 states in pertinent part," Do not exceed the speed that will permit stopping within one-half the range of vision, the speed authorized for trains on the same track, or the speed listed below, whichever is less...." Rule 727 (Spacing of Equipment) provides:

1. Work (Red) zones:
  - a. Red Zone for on-track equipment is defined as a point 15 feet in front of the machine to a point 15 feet behind the machine or 10 feet beyond the maximum reach of any extended portion of the machine, in any direction, whichever is applicable.
  - ...
  - c. Roadway workers must not enter a machine's Red Zone without first communicating with the operator to establish safe work procedures....

## 2. Minimum Distances between Equipment

Maintain the following minimum distance between the machine you are operating and the machine to the front when performing the described activity:

- a. Working: 40 feet, unless a different distance is specified.
- b. Travelling: 200 feet.
- c. Bunching: 40 feet, unless speed is 5 MPH or less, then maintain the sufficient distance to prevent an accident.

The investigation was held on June 21. Carrier witnesses System Manager SPG Teams James Van Kirk and Roadway Equipment Manager Michael Aquilina testified that the cart was inspected and the incident investigated using the cart itself. They also testified that the out-of-control movement that had occurred was replicated only when the travel lever was left in reverse—rather than leaving it forward, as required by the operator's manual—when switching from travel to work mode. No operational defects or malfunctions were found in the cart itself that could have caused the accident. By letter dated July 1, the Carrier informed Claimant that he had been found guilty of the charges against him, and he was assessed a thirty-day actual suspension.

On July 10, the Organization submitted to the Carrier the following letter:

This letter is concerning an SPG 6XC4 investigation on Tim Atkins ID# 621024, with the discipline being assessed of 30 days between June 3, 2005, through July 2, 2005. The hearing was held in South Charleston West Virginia on June 21, 2005, with a[] decision dated July 1, 2005.

We are requesting this case be listed for PLB 6564....

By letter dated August 12, the Carrier declined to change its decision in Claimant's case.

The parties have presented the matter to this Board for final determination.

**Carrier's Position:**

As an initial matter, the Carrier contends that the Organization failed to file an appeal as required by Rule 25 of the parties' Collective Bargaining Agreement, and that therefore the Organization's progression of the matter to the Board is substantially flawed. Nevertheless, the Carrier argues, Claimant was afforded a fair and impartial

investigation during which all of Claimant's rights were preserved. Despite having no obligation to do so, the Carrier arranged for the presence of witnesses requested by the Organization. Although the Organization objects to the Carrier not providing statements pre-hearing, the Carrier argues that it was under no obligation to do so, nor did any such statements exist.

The Carrier further argues that the investigation determined that Claimant failed to properly set up the quality cart as required by manufacturer's directions. Post-accident testing of the cart demonstrated no existing functional deficiencies that could have caused the collision. According to the Carrier, the investigation showed that for the car to move as it did on June 2, Claimant must have positioned the travel lever in reverse prior to switching to work mode. The Carrier asserts that the Organization's suggestions regarding what might have happened to cause the accident are mere speculation.

It is the Carrier's additional position that the thirty-day suspension assessed Claimant was not unduly harsh. As an employee of long experience, Claimant was aware of the importance of following operation manual instructions for the sake of safety. Claimant's failure to do so caused a collision resulting in damage to property. Moreover, he placed himself and others in harm's way. The Carrier submits that the discipline imposed was justified.

**Organization's Position:**

The Organization contends as an initial matter that the Carrier violated Rule 24 of the parties' Agreement by failing to provide statements requested by the Organization prior to the hearing.

The Organization further argues that the quality cart was flawed. Carrier witnesses Van Kirk and Aquilina admitted that the cart had been sent back to the factory for adjustments because it frequently derailed. All witnesses agreed that the travel control panel was not marked in any way to warn operators that the travel lever must be in a forward position for work mode. All witnesses agreed that there was no restraint on the lever that would prevent it from being inadvertently knocked into reverse. Mechanic Hughie Galbreath, Jr., Kenneth Lee Orsburn (regular operator of the quality cart), and Foreman Jackie L. Lucas testified that no one was aware the cart would move the way it did on if the travel lever was left in reverse prior to the June 2 incident.

Testifying on his own behalf, Claimant denied leaving the travel lever in reverse when switching to work mode. He stated that he traveled in reverse to the desired position for the cart, and:

[W]hen I got there I had parked the machine at approximately 60 feet from the [third-party hi-rail] truck, and I set the machine up. The ... travel handle was in a forward position. I had the brakes on before I left the machine. I walked back to the remote area, I flipped the brake on. I went back to the front, I also had applied both brakes, the travel brake and the [parking] brake ... and so when I had applied the park brake in the back for the remote system I went back and I took the travel brake off and the part brakes off. Went back to the rear machine ... and I ... plied the button ... to go forward, and t went in the opposite direction.... I hit the other button and it wasn't responding, so that's when I put the brake on, and when I put the brake on it took a long time for it to apply, and when I realized it wasn't going to stop before it hit, I tried to get up on the machine to knock [the lever] in neutral.

(Car. Exh. B at 48.)

### **Findings:**

As a threshold matter, the Board finds that the Carrier accepted the Organization's letter of July 10, 2005 as an appeal, and that the Carrier's procedural challenge therefore


should not be determinative of the matter presented herein. Moreover, after a careful and thorough review of the record in the instant case, the Board is satisfied that all necessary due process was afforded Claimant. Claimant was afforded a full and fair hearing, with timely notice of the charges, time to prepare a defense, and the opportunity to produce and examine witnesses and evidence.

On the merits, it is undisputed that the quality cart collided with a third-party hi-rail truck while Claimant was operating the cart. The Organization does not refute that, as concluded by the Carrier after inspecting and testing the cart post-incident, the cart will move in reverse even when the forward button in work mode is pressed if the travel lever has been left in reverse. While the Organization has emphasized that the cart was ultimately sent back to the factory to have a defect corrected, the tendency for the equipment to derail has not been linked in any way to Claimant's June 2 accident. Similarly, the Organization's assertions that the machine is flawed because there is no warning on the travel console about leaving the lever forward when switching to work mode, and/or because there is no mechanism by which to lock the lever in place to prevent it from being inadvertently knocked to reverse, are unpersuasive. While there may be no warning on the travel console itself, the operator's manual is clear that the travel lever must be in the forward position when switching to work mode. Claimant has not denied being familiar with the manual's requirements; indeed, he claims to have followed them. The Organization has presented no evidence that the travel lever was inadvertently knocked into reverse on June 2 or on any other occasion, and its argument in this regard is pure speculation.

The bottom line is that Claimant was responsible for the safe operation of the quality cart on June 2, 2005. The record is clear that testing of the cart immediately after the June 2 incident ruled out any operational defects that could have caused the accident. That leaves operator error as the only possible cause for the cart's out-of-control movements and ultimate accident. This conclusion is supported by the Carrier's test results—unrefuted by the Organization—showing that the cart's movements on June 2 could only have occurred under conditions in which the travel lever was in reverse. It was Claimant's responsibility to ensure that the travel lever was in a forward position while he operated the cart in work mode. By permitting the machine to operate out of control and actually collide with another piece of equipment, Claimant failed to fulfill his responsibility to a serious degree, especially in light of the crucial safety issues inherent in the railroad industry. The Board therefore finds that the suspension imposed on Claimant was justified and must be upheld.

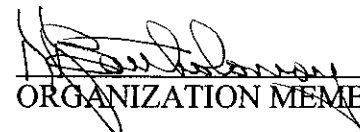
**Award:**

The claim is denied.

  
JOAN PARKER, Neutral Member

  
CARRIER MEMBER

DATED: 11-10-06

  
ORGANIZATION MEMBER  
DATED: 11-10-06