

BEFORE PUBLIC LAW BOARD NO. 7007

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
MASSACHUSETTS BAY COMMUTER RAILROAD**

Case No. 23

STATEMENT OF CLAIM:

Carrier's decision to impose a fifteen-day suspension upon Claimant R. Sweetman, and to require him to undergo remedial safety training, was based upon unproven charges. The Claimant's record should be cleared, and he should be made whole for all lost wages and benefits.

FINDINGS:

By letter dated May 7, 2008, the Claimant was directed to appear at a formal investigation on charges that the Claimant allegedly had operated a Boom Truck in such a manner as to cause or contribute to the vehicle striking an overhead bridge, causing extensive damage to the vehicle such that it was removed from service, and also causing damage to the bridge. After a postponement, the investigation was conducted on June 17, 2008. By letter dated June 26, 2008, the Claimant was notified that as a result of the investigation, he had been found guilty as charged, and he was being issued a fifteen-day suspension and was required to undergo remedial safety training. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier initially points out that the posted clearance for the bridge was thirteen feet and six inches, while the height of the boom, when properly cradled, was thirteen feet and two inches. The Carrier contends that the record in this matter therefore

demonstrates that the Claimant could not have properly secured the boom when he left the work site. The Carrier asserts that although it may have been visually acceptable to the supervisor, there is no indication that the supervisor made a personal inspection or was required to do so under any safety rule or otherwise. The Carrier argues that the responsibility to secure the boom to its most restricted position fell upon the Claimant, and the Claimant was qualified to perform this task.

The Carrier maintains that it also was incumbent upon the Claimant to drive safely and remain cognizant of road hazards, such as an overhead bridge. The Carrier submits that if the Claimant merely was a victim of a sudden bounce coincident with traveling under the bridge, then this is indicative that the Claimant should have been driving more cautiously, given the Claimant's knowledge of the minimum clearance between the highest point of the boom and the posted height of the bridge. The Carrier also points out that other witnesses did not agree that the road was bumpy.

The Carrier insists that the measurements speak for themselves, and there were no environmental factors or structural defects that detracted from the Claimant's overall responsibility for the incident, which resulted in a significant monetary expenditure to repair the equipment.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that there is no evidence or testimony that anything other than what the Claimant stated took place. The Organization asserts that the actual height was measured at thirteen feet and one inch, and the boom was correctly

placed in the cradle and traveled as it previously always had. The Organization argues that the Carrier is required to prove its case by actual evidence, and the Carrier cannot base its decisions on speculation.

The Organization maintains that there is no evidence that the Claimant violated any rules or operated the vehicle in an unsafe manner. The Organization points out that the bridge height of thirteen feet and six inches is not uncommon, and the vehicle had cleared other bridges of this height in the past.

The Organization insists that it was not until after the hearing that any differing instructions were given as to the storing and travel position for the boom other than what had been the long-standing practice. Pointing to testimony elicited at the hearing, the Organization asserts that in order to stow the boom with a full load of ties on the truck bed was to fully extend the boom and lay it down on top of the ties. The Organization argues that this is where the boom was stowed at the time of the incident.

The Organization ultimately contends that the Carrier has failed to prove its case, and the instant claim should be sustained in its entirety.

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

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant acted in violation of Carrier rules while operating a timber truck on April 19, 2008. The record reveals that the Claimant failed to take the appropriate precautions when he was approaching a low-level bridge in that truck. The Claimant failed to reduce his speed

even though there was very little clearance and some movement by the boom which could lead to an accident. The Claimant failed to exercise the appropriate precaution while he was operating the truck that day.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant was found guilty of violating Rule 8(k). That rule prohibits "abusing, destroying, damaging, stealing, or defacing property, tools or equipment or time of the company or the MBTA." Although that rule does not indicate that the action must be intentional, it is clear from this record that there was nothing intentional done by the Claimant that led to this accident. He may have been negligent, but he certainly did not intentionally abuse, destroy, or damage Carrier property. Consequently, this Board finds that the Carrier acted unreasonably and arbitrarily when it issued a fifteen-day suspension to the Claimant. Certainly, the Claimant needed to be trained in remedial safety, but this Board finds the fifteen-day suspension to be unreasonable and arbitrary. There is nothing in this record that shows that the Claimant's previous disciplinary record was bad and justified the issuance of a lengthy fifteen-day suspension. We hereby reduce the suspension to a more appropriate five-day suspension and we order that the Claimant be made whole for the additional ten days.

AWARD:

The claim is sustained in part and denied in part. The fifteen-day suspension to

the Claimant is hereby reduced to a five-day suspension and the Claimant shall be made whole for the additional ten days. The Claimant shall still be required to attend remedial safety training.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 12/8/09


CARRIER MEMBER

DATED: 12-08-09

1 Dissent:

CLAIMANT WAS ADMITTEDLY
NEGLIGENT. BRIDGE HEIGHT
WAS UNDERSTATED BY SEVERAL
INCHES. ROAD WAS SMOOTH.
DAMAGE WAS SIGNIFICANT.
ACCIDENT WAS SOLELY THE
FAULT OF THE CLAIMANTS.