

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
Division of the International Brotherhood of the Teamsters

STATEMENT OF CLAIM:

"In accordance with the provisions of Rule 25, Section 3 of the June 1, 1999 Agreement, the following will serve as our appeal of discipline assessed to BMW employee A.D. Epps, as a result of a hearing held on December 8, 2005 in Atlanta, GA.

The Carrier's actions were capricious and arbitrary and cannot stand. For the reasons stated, plus the objections raised at the hearing, the charge letter and all matters relative thereto should be removed from Mr. Epps' personal record, Mr. Epps should be immediately returned to the service and made whole for all losses suffered."

OPINION OF BOARD: A. D. Epps, the Claimant, was hired by CSXT in the Engineering Department on August 10, 1972. At all times relevant to the case at bar, Claimant Epps was assigned as a Vehicle Operator on the Atlanta Service Lane Work Territory (SLWT). On May 6, 2005, Claimant Epps was operating a large, semi-type truck at Carrier's Tilford Yard in Atlanta, Georgia. Unbeknownst to Claimant Epps, Carrier Officers were performing routine observations of the employees in the vicinity.

As Claimant Epps was operating through the yard, the Officers observed him operating his truck without wearing glasses with protective side shields, as required by Carrier's Safety Rules. When the Carrier Officers requested Claimant Epps to stop operating and step out of the truck, he

was still not wearing his side shields, but carrying them in his hand, a continued violation of the Safety Rules. Moreover, as Claimant Epps was leaving the truck, the Officers observed him searching the passenger side seat attempting to locate the glasses.

As required by Federal Safety Standards, the operators of the large, semi-type trucks must maintain a detailed daily log of the truck's operations. The Officers questioned if Claimant Epps was indeed maintaining an appropriate log, and he replied he did. However, after an attempt to locate the log book, he stated it was in the possession of the Roadmaster. Engineer of Track S. D. Frazier, among the observers, inquired with the Roadmaster if it was indeed in his possession. However, the Roadmaster stated he did not have the logbook. [As of the date of the hearing, neither the Organization or the Carrier ever located Claimant Epps' logbook].

As a result, Claimant Epps was instructed to attend a formal investigation, by letter dated May 23, 2005, to be held June 2, 2005. Claimant Epps was charged with, *"violating CSXT Operating Rule GR-2, part 4, 'Employees must not be . . . dishonest', with violating CSXT Safe Way General Safety Rule 6, 'Be familiar with and wear approved personal protective equipment. . . 'and with violating the Commercial Drivers License Policy."* After five (5) postponements at the request of the Organization, the investigation was held on December 12, 2005, with Claimant Epps and his duly authorized BMW representative in attendance.

From the evidence and testimony presented, Carrier determined that Claimant Epps was guilty as charged, and apprised him of such by letter dated December 28, 2005, which imposed a thirty (30) day suspension without pay. Vice Chairman L. C. Smith of the - BMW Allied Eastern Federation (AEF) timely appealed the discipline by letter dated January 3, 2006. Mr. Smith averred, *"Initially we must point out that Mr. Bossone's decision is defective because the transcript,*

erroneously states that the hearing was held on Thursday, December 12th. December 12th was on a Monday. The hearing was actually held on December 8, 2005. Also, transcript, page 2, reveals that Carrier failed to comply with the provisions of Rule 25, Section I (d) by investigating an incident which occurred on May 6, 2005, seven (7) months earlier. Although the conductor did mention postponement letters that could be included as exhibits, no additional letters were admitted to the record to the hearing and there were no postponements to the November 21, 2005 charge letter".

We find no fatal procedural violation in the handling of this matter. According to the record, the investigation was originally scheduled for June 2, 2005, by letter dated May 23, 2005. By letter dated May 31, 2005, Mr. Smith requested and was granted a postponement of the investigation because: *"Mr. Epps' health problems in connection with cataracts of the eyes and other problems. I have learned today that Mr. Epps is in the process of having surgery on his eyes and is not medically able to avail himself for the hearing on June 2, 2005. "* The Carrier allowed for the postponement, and informed Mr. Smith, by letter dated June 14, 2005, investigation would be postponed indefinitely until Mr. Epps' health allowed him to attend. The Carrier informed Mr. Smith that the next agreed upon time for the investigation would be September 1, 2005, and he was apprised of such by letter dated August 22, 2005. The Investigation was once again postponed and rescheduled for October 13, 2005, at the request of the Organization. Finally, there were two final postponements, at the request of the Organization and the Carrier. This documentary evidence indicates the Organization's protest about an untimely hearing have no factual support in the record.

As to the Carrier's finding of guilt, Carrier presented sufficient evidence at the formal investigation to support its conclusions that the Claimant was derelict regarding both his protective

eye wear and the DOT mandated log books. In response to the Carrier's *prima facie* proof of Claimant's culpability, the Organization asserted that "*Mr. Epps had prescription eye glasses with approved eye shields, that when he crossed the tracks with the truck, the truck bounced him around knocking off his glasses and disturbing the positioning of the side shields, that he pulled clear of the tracks to fix his glasses*". However, the record contains no evidentiary support for these bare assertions. Nor is there any evidence to support the assertions that "*Mr. Epps kept and maintained an accurate log book. At the time of the incident his log book was in his pickup truck at the Roadmaster's office. The witnesses obviously misconstrued the information given them on that date*".

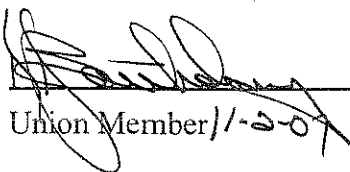
Mere assertions not represented by the facts on the record are not proof and bare rhetoric is not enough to overcome the Carrier's evidence that the Claimant was culpable as charged. Nothing in this record persuades this Board to reverse or modify the disciplinary action taken by the Carrier.

AWARD

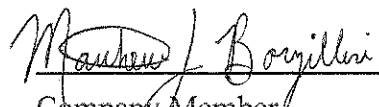
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 1-2-07



Company Member
11/2/2007