

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 TEAMSTERS

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the CSXT/BMWE Agreement, dated June 1, 1999, the following will serve as our appeal of discipline assessed to BMWE represented employee R. Savage ID#****, as a result of the hearing held on July 26, 2005, at Livonia, Michigan.

Due to the obvious violation of Rule 24 (I), the objections raised during the Hearing and the reasons stated herein, it is respectfully requested that the charge letter of mazy 12, 2005, and all matter [sic] relative thereto, be removed from Mr. Savage's personal file. Mr. Savage shall have his Track Inspector seniority date placed on any and all rosters, as was in effective [sic] prior to the disqualification assessed. In addition, we request that Mr. Savage be made whole for all losses suffered as a result of the fifteen (15) day suspension and the difference in straight time and overtime hourly rate of pay as a result of the Carrier's action. Mr. Savage was and still is qualified to perform duties relative to Track Inspection.

OPINION OF BOARD:

The former Chesapeake and Ohio Railway Company hired Mr. R. Savage (hereinafter referred to as "Claimant") in the Maintenance of Way Department on April 10, 1978. At all times relevant to this dispute, the Claimant was assigned as Yard Track Inspector on the Detroit District.

On or about April 20, 2005, Claimant's supervisor, Roadmaster Cameron, advised the Claimant that on May 4, 2005 the FRA would be conducting a "detailed focus inspection" on all yard tracks within Rougemere Yard . Specifically, the Claimant was directed to "note and report all potential violations as it related to excessive/wide track gauge". Claimant was further instructed to "take any track out of service" where necessary repairs could not be timely performed prior to the May 4 FRA inspection. Claimant submitted the report, as requested, on May 3, 2005.

On May 4, 2005, the FRA Inspector conducted his inspection of Rougemere Yard, during which five (5) defects were found, two (2) of which were reported as Code 1 violations. Moreover, both defects noted by the FRA involved "excessive track gauge", which also represented a violation of Carrier's Gauge Escalation policy, as well. As a result of the FRA inspection report, Roadmaster Cameron conducted a field verification of the two locations where Carrier was cited by the FRA, noting however, that Claimant's report conducted just a few days prior showed "no abnormalities whatsoever".

On May 5, 2005, the report and its summary were filed with Engineer of Track Moust. On that same day, Claimant and Roadmaster Cameron discussed same, with Claimant maintaining that he had "thoroughly inspected" the entire yard and that the track gauge defects found by the FRA shortly thereafter "must have occurred" following the Claimant's inspection. In that connection, the Claimant opined that the defects noted by the FRA were "attributable to other forces, e.g., spring thaw".

In a letter dated May 12, 2005, the Claimant was instructed to attend a May 24, 2005 investigation "to develop the facts and determine your responsibility in connection with failure to properly perform your duties, failure to properly detect and report defects and/or substandard

condition within track he was responsible for inspecting”, as well as “failure to comply with the guidelines of the current gauge escalation policy”. The May 24, 2005 hearing was postponed to July 26, 2005, at the request of the Organization. Following a “thorough review of the testimony and evidence developed at the investigation” and due to the “historic evidence of Claimant’s inability to properly perform his duties”, Carrier assessed to Claimant a fifteen (15) day actual suspension. Additionally, the Carrier disqualified the Claimant as a Track Inspector.

On August 24, 2005, BMW Vice Chairman Griffith appealed the discipline contending that the Carrier’s “denial” of the Organization’s request for information under Rule 24(I) of the Agreement “prohibited the Organization from adequately defending the charges levied against the Claimant”. Specifically, the Vice Chairman asserted that: “The Organization takes strong exception to the charges and discipline issued in this case due to the fact that the Carrier did not support the charges against Mr. Savage during the hearing. The Organization’s request, dated June 12, 2005, for any statements and witnesses the Carrier planned on introducing, including the reviewing of relevant management records, specifically we requested a copy of the ‘gauge escalation policy’ prior to the Hearing”.

With regard to the Claimant’s culpability, the Organization noted that the Claimant went home “early” on May 3, 2005, due to being ill, and requested and was given a vacation day for the following day, May 4, 2005. According to the Organization, the Claimant was used as a “scapegoat” and charged for not properly performing his duties, “when he wasn’t even on duty”. With regard to the discipline assessed, the Organization maintained that the prior discipline (“Coaching[s] and Counseling[s]”) to which the Carrier referred at the hearing were intended as “discussions” on how to “better communicate and perform their duties”, and not discipline, *per se*. The Vice Chairman

therefore argued that Carrier's mention of same is a "means to compound the discipline assessed to the Claimant", was inappropriate.

In its denial of the claim the Carrier maintained that all of the Claimant's due process rights were fully protected and that the hearing was conducted in a fair and impartial manner. We have carefully considered that argument and must conclude that we find no fatal due process violation shown on this record. Further, on the issue of "pre-investigation discovery", the language found in Rule 24(i) of the Agreement was not violated, as the Organizations asserts.

The record demonstrates that all of the Claimant's due process rights were fully protected and the July 26, 2005 hearing was conducted in a fair and impartial manner. Turning to the merits of the dispute, the Claimant was found guilty of failing to properly perform his duties, failing to properly detect and report defects and/or substandard conditions within the track for which he was responsible, and failing to comply with the guidelines of the current gauge escalation policy. As a result, Claimant was assessed a discipline of fifteen (15) days actual suspension and disqualification as a Track Inspector.

Roadmaster Cameron received the Claimant's inspection reports for the month of April on May 3, 2005, the day before the scheduled FRA inspection. Payroll records indicate that the Claimant marked off sick one hour early on March 3 and took a vacation day on May 4, since he was still sick. On May 5, the Roadmaster sent an e-mail to Track Engineer Maust, documenting a conversation he had with the Claimant on May 5, discussing the results of the FRA inspection, and the concerns he was having over the excessive amount of gauge noted on the FRA reports. The FRA report listed five defects with 58 1/8 gage which the Claimant had not noted on his May 3 report to Carrier. Carrier produced adequate evidence to support its conclusion that: "The defects noted by

the FRA were all performed on May 4, 2005, all violations were within ten days of being noted by the Claimant. It is unlikely that the gauge would increase to 58 1/8 inch within that time frame”.

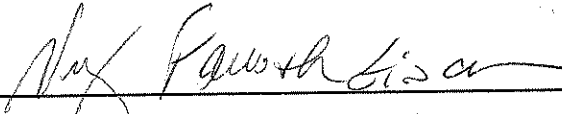
We find no adequate reason to reverse Carrier’s conclusion that Claimant either failed to make an adequate inspection or failed to take the tracks out of service if the gauge exceeded the 58 1/8 inch measurement, despite the Roadmaster’s explicit admonition.

Regarding the amount of discipline, the Claimant’s employment history demonstrates In that connection, the Claimant’s employment history demonstrates that in November 2002, he had a report of “time out” corrective action pertaining to not recording track defects on the inspection report as they appear in the field. Additionally, in May 2003 he was charged with failure to properly perform duties as well as failure to properly detect and report defects within track he was responsible for inspecting. This dealt with wide gauge defects found in Rougemere Yard by an FRA inspector and Roadmaster within tracks recently inspected by the Claimant. Mr. Savage agreed to waive the hearing and plead guilty to the charges, whereupon he was issued a ten (10) day overhead suspension and six month probationary period.

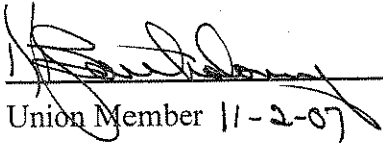
Due to the serious nature of the offense now under discussion and the Claimant’s evident failure to respond to prior progressive discipline for the same infraction, a fifteen day actual suspension and disqualification as a Track Inspector imposed by the Carrier cannot be considered unduly harsh in the circumstances. Therefore, premised upon all of the foregoing, this claim must be denied.

AWARD

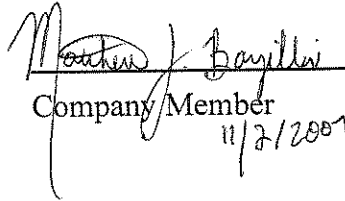
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 11-2-07



Company Member
11/2/2007