

PUBLIC LAW BOARD NO.7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

STATEMENT OF CLAIM:

Appeal of discipline assessed to BMW employee V.C. Pritchard, ID#****, as a result of the hearing held on September 22, 2005, at Louisville, Kentucky.

That the charge letter and all matters relative thereto be removed from Mr. Pritchard's personal file and he be returned to the Tie Handler, and he be made whole for all losses suffered as a result of the Carrier's actions.

OPINION OF BOARD:

The former Baltimore and Ohio Railroad Company (a CSXT predecessor) hired V C. Pritchard ("Claimant") in the Maintenance of Way Department on February 21, 1979. At all times relevant to this dispute, Claimant was assigned as Tie Handler Machine Operator on System Production Force (SPF) 6XT1.

When Claimant was awarded the above noted position, he had not worked the position "for many years". Therefore, in accordance with the Agreement, he was afforded the opportunity to work the assignment while perfecting his skills on the job. The record demonstrates that while Claimant worked the position, he had another qualified machine operator to assist, if needed. Claimant

continued to work his assigned position for a period of thirty-one (31) days, however, Carrier maintained he did so “without notable improvement”. Due to the Claimant’s “inability” to maintain the requisite production levels, on August 23, 2005, Claimant Pritchard was removed and subsequently disqualified from the Tie Handler Machine Operator on SPF 6XT1.

In a letter dated August 29, 2005, Claimant received confirmation of his disqualification, effective the close of business August 23, 2005. In the same correspondence, Claimant was instructed to attend a hearing relative to his disqualification, which was ultimately held on September 22, 2005, and by letter dated October 4, 2005, Claimant Pritchard’s disqualification as a Tie Handler Machine Operator was confirmed.

On October 10, 2005 BMW Vice Chairman A. Shelton appealed Carrier’s confirmation, referring to the action as “discipline assessed to BMW employee V. C. Pritchard”. Specifically, the Vice Chairman argued that the Claimant was not given “reasonable” time or training in which to become a qualified Tie Handler Operator. Given that rationale, the Organization requested that the charge letter, and all matters related thereto be removed from the Claimant’s file.

In its denial of the October 10 appeal the Carrier asserted that the Claimant “failed to perform duties as a Tie Handler Operator in a satisfactory manner as required by CSX”. Carrier pointed to the language contained in Rule 3, Section 1 which stipulates that: “the awardee will be given equal and fair instruction and training up to a period of thirty (30) days”. Carrier notes that the Claimant was afforded said opportunity, as well as the benefit of a qualified operator who was available as a tutor throughout the prescribed training period. In that connection, the Carrier argued that: “The Claimant did not seek assistance from his supervisors, nor did he ask for a job briefing or any clarification of a job briefing.”

In an October 2005 the Organization submitted an appeal on behalf of the Claimant referring to the disqualification at issue as: “..discipline assessed to BMW employee V. C. Pritchard...”. However, premised upon careful review of the record evidence, we cannot find that Carrier was arbitrary when it disqualified Claimant from the position at issue, nor do we find evidence that said disqualification was punitive in nature or intent.

Rule 3-Selection of Positions, Section 1-Assignment to position, states, in pertinent part: “If required, the awardee will be given equal and fair instruction and training up to a period of thirty (30) days depending on the position in order to become qualified for the position”.

The record demonstrates that the Claimant was awarded a position as a Tie Handler Machine Operator on SPT 6XT1. Although the Claimant had worked the position before, he had not done so for “many” years, and therefore was afforded the opportunity to work the assignment while practicing his skills. Unfortunately, the Claimant was unable to maintain requisite production levels and at the end of the training period, Mr. Pritchard was disqualified from the tie handler position.

Although the Claimant was given access to an experienced Tie Handler Operator upon whom he could call for assistance, the record demonstrates that the Claimant did not avail himself to that resource. In that connection, it is not disputed that the Claimant did not seek assistance from his supervisors, nor did he ask for a job briefing or any clarification regarding his duties throughout the thirty (30) day training period.

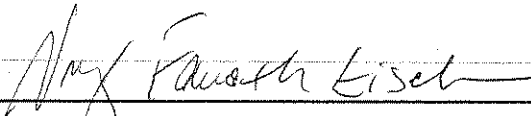
Finally, we look to the Claimant’s own testimony at the hearing in which he admitted that he had not operated a tie handler for “quite some time”, and that he thought he had “lost the knack for it”. With respect to the machine itself, the Claimant described the tie handler as “very fast” and maintained that it “jarred me continually”. The Claimant further admitted that: “I did hold the gang

up somewhat because I wasn't familiar with what my job really was out there". In a final forthright admission, the Claimant stated that: "You don't get no younger out there. You're always getting older."

We are persuaded by the evidence of record that Carrier had justification to disqualify the Claimant, and in the circumstances, Carrier's actions cannot be arbitrary or unduly harsh. Therefore, this claim must be denied.

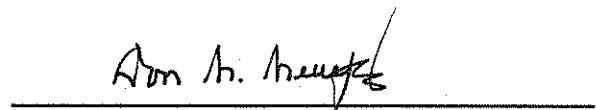
AWARD

Claim denied.



Nancy Faircloth Eischen, Chair

Dated at Spencer, New York on June 19, 2007


Union Member 6-27-07
Company Member 7/2/07