

PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYEES DIVISION
(
(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated March 24, 2008, S. K. Piccirillo, Manager Program Construction, notified Tyler W. Green to attend a formal Investigation at the CSX General Office building in Evansville, Indiana, on April 3, 2008, "to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 09:15 hours on Wednesday, March 12, 2008, at on near MP OHR 90.3 on the LH&STL subdivision, in the vicinity of Havensville, Kentucky, when the Ballast Regulator (BR 200602) that you were operating on System Production Team 5XT9 struck the Double Broom (TB 200601) being operated by Mr. R. D. Jones." The letter continued, "In connection with the above matters, you are charged with failure to properly and safely perform the responsibilities of your assignment, failure to control your machine, and possible violations of, but not limited to, CSX Transportation Operating Rules - General Rule A; General Regulations GR-2, GR-5 and GR-16; Section 7 Operating Rules 720, 722, 727; as well as, CSX Safe Way General Safety Rule GS-1, GS-3 and Engineering Department Safety Rule ES-15."

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are

respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On March 12, 2008, Tyler W. Green (the Claimant), a Production Trackman on the 5XT9 system production team, was assigned to bring a Ballast Regulator from the Skillman siding to a surfacing crew on which he worked, a distance of approximately 8.3 miles. The Claimant was transported to the siding where he took control of the Ballast Regulator. He operated the machine the 8.3 miles to the site where the surfacing crew was working, but was not able to stop it before it ran into a Double Broom operated by Ron Jones, which was stopped on the tracks where the crew was working, causing serious injury to Jones and extensive damage to both machines.

Following the hearing on April 3, 2008, the Claimant was notified by letter dated April 22, 2008, from the Assistant Chief Engineer System Production that the evidence presented during the Investigation demonstrated that he was guilty of the infractions with which he was charged and that his actions "clearly violated applicable CSX Transportation Operating Rules and Regulations; CSX Safe Way Safety Rules; as well as, Engineering Department Rules and Instructions." Because of his guilt, the letter stated, "and due to the serious nature of the offenses," it was determined that he was "to be immediately dismissed from the service of CSX Transportation."

The Carrier contends that the Claimant was provided a fair and impartial investigation in accordance with Rule 25 (Discipline) of the parties' System Agreement. It produced substantial evidence of the Claimant's guilt, the Carrier argues, including documentary evidence and the Claimant's admission of guilt. Further, the Carrier

maintains, the discipline of dismissal was fully justified given the severity of the incident, including the severe injury of Mr. Jones that could have been prevented. The Carrier contends that many Boards on the Carrier's property and in the industry have consistently maintained that a carrier may dismiss an employee for a single offense when a severe safety infraction has been committed. It cites decisions which it contends support its dismissal action in this case.

The Organization's main contention is that the Carrier acted irresponsibly in assigning a relatively new, inexperienced employee to operate a Ballast Regulator on which he had been insufficiently trained.

The Board is of the opinion that the Claimant was not sufficiently trained to tram the Ballast Regulator for more than eight miles, including over 11 highway crossings, based on his short-term employment with the railroad and his very limited training on that machine. The Claimant began his employment with the Carrier on August 6, 2007. On the date of the collision here involved, March 12, 2008, he was 20 years old. During his entire period of employment with the Carrier he held the classification of Production Trackman. He never qualified as a machine operator for any piece of equipment.

The Claimant's training on the Ballast Regulator consisted of two days, five hours each day, in which he sat in the jump seat and watched someone else operate the machine, and two days on which he operated the machine by himself. On only one of those two days did he tram the Regulator for a distance of several miles. There is no evidence that he ever received training in how to handle an emergency situation, such as in the present case, when he suddenly found himself approaching a Double Broom stopped on the tracks approximately a thousand feet in front of him.

For example, there is no evidence that he was trained that he should sound his horn

in a situation such as he found himself on March 12, 2008, or what steps to take to stop quickly in an emergency, or what to do if the brakes appear not to be working properly. The Board believes that the following testimony by the Claimant is well taken: "I think with more training this would have never happened. It's my opinion, but I think if I like had more seat time and more training with somebody actually in the seat behind me with me out there running it and showing me everything about the machine it wouldn't have happened."

The Claimant was repeatedly questioned at the Investigation about whether he ever spoke up and expressed his unwillingness or inability to operate the Ballast Regulator. Witness Jerry E. Thomas, who was the Foreman when the Claimant was first placed on the Ballast Regulator, testified that he and a Mr. Holthouser decided to put the Claimant on the Ballast Regulator although there were two experienced people who probably would have done a better job than the Claimant (Tr. 162). He stated that it was not feasible to assign the other two people to the job but did not explain why.

After testifying in response to the hearing officer's questions that he did not instruct the Claimant to get on the Regulator but offered him the opportunity to run it, he was asked by the Claimant's representative, "Did you realize that Mr. Green didn't have any experience on the regulator, Mr. Thomas?" He answered, "Yes, I did." Mr. Thomas was then asked whether it was his and the other individual's decision to place the Claimant on the Regulator. He stated, "That is correct."

When the Claimant was called as a witness, the hearing officer asked him if he was forced to run the Ballast Regulator. He stated that he was not forced. The Claimant was then asked, "Were you offered the opportunity to run that machine?" He answered, "I was told to do it, not offered." The hearing officer then asked him, "Did you express any

concern that you didn't want to run it?" He answered, "Yes, at first." He was asked, "To who?" He said, "Ed Thomas."

The hearing officer then recalled Mr. Thomas as a witness and asked Mr. Thomas, "Your first time talking with Mr. Green about running the regulator, did he express any concerns about running it? Or did he deny running it?" Thomas answered as follows:

Oh, expressed - if I remember correctly - again people, this was about 4 weeks back now. And he expressed a little concern about running it - just the overall aspects of the machine and how he wanted to work safe on it and everything else that was included in that. You know, like I say, he was new but he did - he did show some, some - expressed that he did want to be safe and, and, and do a good job.

When the Carrier places a 20-year old person on a large and dangerous piece of equipment like a Ballast Regulator and sends him out on the main track for several miles where he is likely to encounter highway traffic and other railroad machines, it has a responsibility not to let him on his own without first thoroughly training him. Such training should include adequate instruction in the defensive operation of the machine and the handling of emergency situations. So far as the record shows, that was not done in this case. In addition, the particular model Ballast Regulator that the Claimant was assigned to operate on March 12 was a different model than he had received his previous training on, with different controls (Tr. 187).

Because the Carrier sent the Claimant onto the main track without sufficient training, it must share the responsibility for the collision that occurred, and the dismissal of the Claimant may not be permitted to stand. There are also additional considerations, which strongly support mitigation of the penalty in this case.

Management and supervision had only good things to say about the Claimant. System Production Team Manager Dennis J. Rhodes, when asked by the hearing officer if the Claimant was a good employee, testified, "I have had no problems." (Tr. 50). He also testified that from the time he has spent with the Claimant, the latter appears to be safety conscious. Jerry E. Thomas, who was the Claimant's foreman when the Claimant worked together with him, testified that he had "no problems with" the Claimant. "Everything we asked him to do he gave it 110%, no problem with him. Always full of energy, always ready to go, and worked safe." (Tr. 160).¹

Nor is there substantial evidence that the Claimant was traveling at an excessive rate of speed. According to management testimony at the hearing, the speed limit for Ballast Regulators (not including at crossings) was 30 miles per hour (Tr. 25). According to Carrier Exhibit B, p. 239, it was 25 miles per hour. At 20 miles per hour, it would take three minutes to travel one mile and 24 minutes to travel eight miles. According to the evidence the Claimant received 704 authority at 0908 hours, and the collision occurred at 0938 hours. Even allowing five minutes for the additional tasks that the Claimant had to perform, such as lining a switch, taking a derail off a portable derail, etc., that still allows 25 minutes to cover the 8.3 miles. And the Claimant was allowed to travel at at least 25 miles per hour, not 20 miles per hour. In the Board's opinion the evidence does not show that the Claimant was traveling at an excessive speed, even taking into account the necessity to slow down to 5 miles per hour at crossings.

¹The evidence that Claimant was a safe worker and a good and cooperative employee should be contrasted with the situations in Public Law Board Cases Nos. 6564 and 6965, relied on by the Carrier, where, in each case, the claimant had a prior record of safety violations or negligent conduct. In neither of those cases, or in Award No. 9367, a third case relied on by the Carrier, was there evidence that the claimant was inadequately trained for the equipment he was assigned to operate.

The Board also believes it significant that the Carrier's investigation disclosed that a hydraulic oil leak from the ballast regulator began 654 feet prior to the point of impact. This corroborates the Claimant's testimony that the Ballast Regulator would not stop when he applied the brakes and that he then put the throttle in reverse. Thus, Manager of Work Equipment John Christopher Brigman testified that when the Claimant threw the machine into reverse, it dumped oil onto the track (Tr. 138). It does not make sense that the Claimant would have thrown the machine into reverse in order to stop it without first trying to stop it by applying the brakes. Either the brakes did not work, as the Claimant testified, or he did not apply them correctly. If the latter was the case, it shows the importance of proper training before putting someone in charge of potentially dangerous equipment like a Ballast Regulator.

For the reasons stated the Board finds that the dismissal of the Claimant must be reversed and he be promptly reinstated to employment with the Carrier. The Board finds that the Claimant was also at fault with regard to the accident that occurred in this case. The Claimant should not have accepted responsibility and gone onto the main track with a large and dangerous machine such as a Ballast Regulator knowing that he was not fully qualified to operate it without additional training. The Board believes that he also should have been more cognizant than he was of his proximity to the surfacing crew and have taken precautionary measures sooner than he did to be able to stop without making contact with the other equipment. For these reasons he will not be awarded back pay. For purposes of the Claimant's disciplinary record, the Carrier shall treat this case as a suspension for involvement in a collision with another vehicle.

A W A R D

Claim sustained in accordance with findings .

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the award is transmitted to the parties.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
October 13, 2008