

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

STATEMENT OF CHARGE:

Roadmaster Tim Magargle, by letter dated February 19, 2008, notified four employees, including T. Bocchimuzzo (the Claimant) , to attend a formal Investigation on March 6, 2008, at the CSXT Division Office in Tampa, Florida, "to determine the facts and place your responsibility, if any, in connection with the accident that allegedly occurred on February 9, 2008 at approximately 13:30 hours at the Allendale Road Crossing . . . on the Miami Subdivision, with vehicle N3022D." "In connection with the above," the letter stated, "you are charged with failure to properly operate a company vehicle in your care to avoid hitting another object and causing damage to CSXT equipment, specifically damaging the base of the crossing gate." The actions of the four employees, the letter asserted, "appear to be in possible violation of, but not limited to Operating Rules A, F, L, S, GR2, GR5, GR6, GR16, General Safety Rule GS7, MofW MWI G025 and CSXT Vehicle Policy."

Following receipt of the charge letter, a copy of which had been sent to the General Chairman each of the Seaboard Federation and the Allied Federation, the Claimant's representative, the Vice Chairman of the Allied Federation, discussed the possibility of the employees involved accepting a waiver to the Investigation. In the

meantime the March 6th scheduled Investigation was postponed by the agreement of the parties. On March 3, 2008, the Roadmaster wrote a letter to the Claimant and one of the other employees charged informing them of the new hearing date for the Investigation and including the following paragraph:

Mr. Traywick [Vice Chairman Allied Federation] also indicated that each of you may be inclined to accept a waiver to this investigation but were reluctant to sign with all of the rules, regulations and instructions listed in the original charge letter. I have reviewed them and am willing to strike Operating Rule F, General regulation GR16, and General Safety Rule GS7 and modify GR2 to read in possible violation of GR2(4) to read careless. Should you choose, you may elect to accept a Waiver in lieu of this investigation by signing the option below and return this form to me by the end of the work day on March 12, 2008. You may fax the form to [fax number], otherwise, the hearing will be held on March 27, 2008.

At the bottom of the letter was a signature line for the recipient of the letter to agree to “Participate in the ‘Waiver’ process by accepting 10 days actual suspension. The suspension dates to be determined by Division Engineer.” In the alternative he could accept “Customary handling under the Railway Labor Act and the applicable Collective Bargaining Agreement.”

At the Investigation the Roadmaster explained that the reason that the second letter was addressed to only two of the employees involved in the accident, instead of all four as in the original letter, was the Carrier’s determination that the driver of the vehicle (Claimant Bocchimuzzo) and the foreman (G. E. Shipley, the second addressee on the letter) had greater responsibility with regard to the accident. The other two employees, who were sitting in the back of the truck, received formal coaching and counseling with

regard to the incident. The Claimant and Foreman Shipley, according to their testimony, have each been employed by the Carrier since October, 1997.

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.

The Claimant and the foreman were both members of a team that was repairing rail defects on February 9, 2008. They had finished their last repair for the day and were sitting in their truck doing paperwork. The crew member who had driven to the job site had a headache and asked the Claimant if he would drive back to the hotel. Claimant Bocchimuzzo agreed to do so. The original driver sat in the back with the fourth member of the crew, and Claimant Bocchimuzzo, the new driver, was behind the wheel. The foreman sat in the front of the truck with the Claimant.

The truck was parked on a narrow, spur road to the side of the railroad tracks about 50 feet from the main road. In order to get to the main road the truck had to back up until

it reached the road. The Claimant backed up the truck, using both side mirrors to avoid hitting anything. The foreman also was watching through the side mirror on his side. While the vehicle was being backed up, it hit the base of one side of a crossing gate that was installed near where the road intersects with the railroad tracks. The object was not visible in the mirrors. The bottom of the gate pole broke off, as it was designed to do, when contact was made.

Another employee, who maintains signals, was working in the same area, and he took the necessary steps to protect the crossing. The foreman called the Roadmaster and reported the incident to him. Arrangements were also made to have the necessary repairs done to put the crossing gate back into operation. The repairs were completed by the following morning. There was no damage to the vehicle, and nobody was injured in the incident. One arm of the crossing gate was broken, and there was some damage to the lights on the gate. The signal supervisor estimated the total damage as \$2,000.

The Roadmaster testified that the Claimant and the foreman were charged with violation of Engineering Department Safety Rule ES-13b, which states:

ES-13. Motor Vehicles

...

- b. If two or more people are occupying the motor vehicle designate one person to guide backing movements from the ground.

When the February 9 accident occurred, the Roadmaster stated, there was nobody that

was outside of the truck while the driver was moving the truck back. There were two or more people occupying the vehicle, the Roadmaster testified, and nobody was designated as the “back-up” person. The Organization objected to the Roadmaster’s reliance on ES-13 since it was not mentioned in the charge letter as a rule that was violated. The Organization’s objection was noted.

The Roadmaster testified that the truck barely hit the pole of the crossing gate but that the poles are made with break-away bottoms to reduce the amount of damage to the crossing gate. Asked why the Claimant and the foreman were charged, the Roadmaster testified, “Mr. Bocchimuzzo was charged because he was driving the vehicle at the time. And Mr. Shipley was charged because he was the foreman and is responsible for the entire gang’s actions. In between the two of them, one of them should’ve made sure that somebody was on the ground backing them out of the location that they were at.”

Although ES-13 is the main rule, the Roadmaster testified, another rule that applies is General Safety Rule GS-4, which states: “**GS-4. Warning other Employees** Warn co-workers of unsafe acts and hazards.” Nobody warned anybody of the hazard of backing up, the Roadmaster stated, or the possibility of having somebody get out on the ground and watch them back up. The paragraph in the Code of Ethics addressing workplace safety, the Roadmaster testified, is also pertinent. It states as follows:

Workplace Safety

CSX is committed to providing a safe and secure work environment. Safety

is a way of life in everything we do, both on and off the job. Each of us is responsible for our own safety and the safety of others. You must be alert to safety risks in your daily work, know your job's safety requirements, and follow all safety and operating rules.

References:

- CSXT's *Safe Way Rules*
- CSXT's *Operating Rules*

The Organization's objections to the references both to Rule GS-4 and the Code of Ethics, on the ground that neither was mentioned in the charge letter, were noted by the hearing officer. The final rule relied on by the Roadmaster as applicable in this case was General Regulations GR-2. 4., which states:

GR-2. All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not

...

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless, or incompetent.

Of the items listed in paragraph 4 of GR-2, the Roadmaster testified, the only one that applied in this case was "careless." Both the Claimant and the foreman were operating rules qualified in 2007 and had safety certification in 2008.

The Roadmaster testified that each time that he has observed the Claimant or the foreman backing a vehicle in the past, there was always a ground man guiding the

vehicle. "I believe this was an isolated case," the Roadmaster testified. He added:

I appreciate the fact that they called me right away. That they were very honest and up front about it. I've never had any problems out of them, very good workers. And, I believe this was an isolated case in which they let their guard down and this specific incident did not have a ground man to back them up.

When questioned at the hearing by the foreman, the Roadmaster acknowledged that at the time of the accident, there was nothing on the job briefing form that stated that a ground man should be designated when backing up a vehicle. About three or four weeks after the accident, however, the Carrier decided to require the crew to designate someone for vehicle backing purposes and enter that person's name on the daily Job Briefing Safety Form. This was done, according to the Roadmaster, because around the same time as the present accident there were about three other accidents involving backing vehicles.

The Claimant asked the Roadmaster why, if the Code of Ethics says that each employee is responsible for his own safety and the safety of others, he and the foreman were the only names on the second charge letter. Why isn't everybody's name on the letter, the Claimant inquired, considering that they were all in the truck and anyone could have said, "Stop"? The Roadmaster answered that the Carrier felt that the Claimant as the truck driver and the foreman had "a higher amount of responsibility." The Roadmaster acknowledged that the other two members of the crew should have said something and

that “they are being handled under the CSX policy with a formal coaching and counseling for this.”

In his testimony the foreman acknowledged that in classes that he has attended it was stated to avoid backing up but, when backing up, to use a ground man when possible. He did know, the foreman testified, that if you have two or more people in a truck, to designate somebody as a ground man. On the Monday following the accident, the foreman stated, in a conversation with Division Engineer Foster, he said, “Believe it or not, Mr. Foster, you can ask anybody that’s ever observed us we have always used a ground man. What happened that day, why we didn’t , I have no idea.”

The reason that they could not see the base of the pole in the truck mirrors, the foreman explained, was because there was a large toolbox on the back of the truck that obscured sight of the base.

The Claimant, a Trackman, testified that he has been on the foreman’s team since June, 2007. With regard to the February 9 accident, the Claimant stated that he looked out both mirrors and saw that it was clear but could not see directly behind him that the other signal was there. He backed up only a few feet, he testified, and felt a slight tap. He and the foreman got out of the truck, and the signal was lying on the ground.

The Claimant testified that he takes the responsibility that he backed the truck up and hit the pole. “I didn’t want to hit it,” he stated. “I didn’t intentionally hit it. I couldn’t see it, it was directly behind me and it was an accident.” The Claimant attributed

the lapse to the fact that on that day he was not the normal driver but was asked at the last minute to drive the truck because the regular driver was not feeling well.

Prior to the accident on February 9, 2008, the Claimant testified, the normal practice for their gang was that one of the guys in the rear would get out of the vehicle and back the driver out. "We normally just don't tell them, you have to do it," the Claimant stated. "It's just like a known normal thing. We just get out and back each other up." On the date of the accident, the Claimant testified, they sat in the truck a long time because they were going over the paperwork. "And that is where we . . . probably . . . got this lapse in our thinking and somebody didn't get out to be the back up man and that's what caused the accident."

The Claimant was asked by the hearing officer why he did not accept a waiver when his union representative had indicated that he (the Claimant) might accept one if the charges were reduced. He answered that he did not feel that he had broken all of the rules listed, that he feels that he broke ES-13 by not using a back up man and that that is what caused the accident. "I didn't yell or curse at anybody," the Claimant stated. "And a lot of these rules have implications to all those different things." All four people in the truck had a lapse, the Claimant stated. Asked if he thought that he was being careless, the Claimant stated that he did not feel that he was being careless, that he just could not see the pole and that is why it got hit.

By letter dated April 10, 2008, from Ron Foster, Division Engineer, the Claimant

was informed of the results of the Investigation. The letter stated in pertinent part:

. . .

Testimony brought out in the investigation revealed that you admitted and took responsibility for hitting the signal equipment. You admitted to violating ES-13 b and that you knew of the rule even if you didn't know the specific rule number. You also admitted that you did not make a walk around inspection or use a ground man. Testimony also revealed that GR2 (4) was also violated in that it was a careless act that caused you to back into the signal equipment and you also admitted that you had a lapse that caused the accident to occur.

It has been determined to a[ss]ess discipline of fifteen days actual suspension and fifteen (15) days overhead suspension.

The following conditions for discipline have been imposed:

1. Discipline of fifteen (15) calendar days' actual suspension. This suspension will begin on April 21, 2008 and end on May 5, 2008. You will return to work on Tuesday, May 6, 2008.
2. Discipline of fifteen (15) overhead suspension beginning May 6, 2008 thru May 5, 2009.
3. You must meet with the Division Engineer on your first day back to work.

Your failure to comply with any of the above directives may result in additional charges and could lead to your dismissal under IDPAP.

The facts of this case are very similar to the facts in Award No. 7, Public Law Board No. 7120, decided on August 15, 2008. The Claimant in this case was charged in the same charge letter as the claimant in the prior case. Both cases were consolidated for hearing before the same hearing officer and decided by the same Carrier official. The appeals in the cases, however, were handled separately.

The same considerations that applied in the prior case to persuade this Board to

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order that the discipline be reduced to 10 days' actual suspension apply in this case. It is the finding of the Board that, for the same reasons as stated in Award No. 7 of this Public Law Board, the discipline of Claimant Bocchimuzzo shall be reduced to 10 days' actual suspension and that the Claimant shall be made whole for any lost wages as a result of imposition of any greater amount of discipline in the present case.

A W A R D

Claim sustained in accordance with the 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
June 8, 2009