

**PUBLIC LAW BOARD NO. 7288**

AWARD NO. 1  
CASE NO. 1

**PARTIES TO THE DISPUTE:**

Brotherhood of Maintenance of Way Employees Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Janice K. Frankman

DECISION: Claim sustained

**STATEMENT OF CLAIM:**

1. The twelve month suspension from track qualification imposed upon V.S. Cardona effective December 22, 2008, for violation of CSX Operating Rule 704-A, occupying non-controlled track without proper authority and CSX Operating Rule 707, part 3 for failure to post conditional stop boards is based on unproven charges and in violation of Agreement.
2. As a consequence of Part 1 above, we request that discipline be expunged from Claimant's personal record and that he be made whole for lost wages including overtime and for holidays, vacation and seniority.

**FINDINGS:**

The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute herein; and that the parties were given due notice of the hearing.

Claimant commenced service with Carrier on April 30, 1974, and holds seniority rights in the Engineering Department in the position Track Foreman. On Wednesday, September 3, 2008, he was Employee in Charge ("EIC") protecting work at Mile Post QD 154.5, Newell Street, on the Erie West Subdivision, when he allegedly violated Operating Rule 707, Part 3 and 704-A for failure to have stop boards properly displayed, and for parking his vehicle foul of the Painesville Yard Lead, without proper track protection. Following investigation on December 10, 2008, he received notice that track qualification was suspended for a period of twelve (12) months effective December 22, 2008. Claimant appealed Notice of Discipline (December 19, 2008) by document dated December 30, 2008. Organization filed this Claim on January 7, 2009. During three years prior to date of incident, Claimant received coaching/counseling/informal corrective instruction ("ICI") for Rules Failure on September 8, 2006.

Under CSX Operating Rule 707, part 3, Claimant was required to post signs to establish long-term working limits without the use of a flagman on a controlled track. Warning signs must be posted at least two (2) but not more than 2 ½ miles from the beginning of work limits or as specified by dispatcher. Conditional stop signs must be posted on each end where working limits begin and at the clearance point of each junction point or as specified by dispatcher. Operating Rule 704-A required claimant to establish working limits on non-controlled tracks including making prior arrangements with the employee responsible for the tracks and making tracks inaccessible to all trains, engines and on-track equipment.

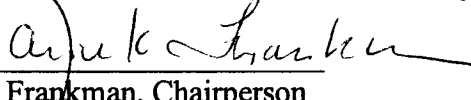
Claimant had Rule 89 Operating Authority from 0800 until 1600 on September 3, 2008. He was Rule qualified, had held his position for 20 years and understood applicable Rules. He set signs in the morning to protect work and received permission to establish working limits on non-protected track from Dispatcher in Charge Orlando. Switches on non-protected track were reversed and locked. Claimant parked his vehicle straddling the rails on non-protected track.

Roadmaster Kopke and Division Engineer Thoburn entered Claimant's working limits by high-rail with Claimant's permission at 1316. Investigation Record is inconsistent with regard to the time of their face to face contact with Claimant. Notice of Investigation describes incident at 1600. Witness testimony identifies times ranging from 1300 to 1600. Claimant was working alone in the working limits listening for trains approaching the warning boards. The protected work was complete and he had taken down conditional stop boards. He re-posted them and he moved his vehicle off the track at Roadmaster's and Engineer's directions. Claimant told them he had Dispatcher's permission for working limits on non-protected track. He was not asked whether he had positive protection. Roadmaster asserted at investigation that even with verbal permission and line and locking of switches, there would not be full protection as required by FRA. He admitted that Operating Rules do not prohibit removal of stop signs following completion of protected work and before Rule 89 time expires.

If proven, Carrier charges constitute serious or major offenses under Individual Development & Personal Accountability Policy (IDPAP). Serious offenses are subject to progressive discipline while major offenses require removal from service with discipline up to dismissal. Carrier failed to provide substantial evidence in support of charges against Claimant. Operating Rules did not require him to keep stop signs posted until the end of Rule 89 work permit and did not preclude him from parking his vehicle straddling rails on non-protected track. There is no proof Claimant failed to line and lock switches on non-protected track, that federal regulation requires more for complete protection or that custom and practice required Claimant to do more or something different under either Rule 404-A or 407, Part 3. Claim is properly sustained.

**AWARD**

Claim sustained as provided in Statement of Claim. Carrier shall comply with this Award on or before June 1, 2009.

  
Janice K. Frankman, Chairperson  
Neutral Member

Dated:  8 2009