

PUBLIC LAW BOARD NO. 7288

**AWARD NO. 2
CASE NO. 2**

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Janice K. Frankman

DECISION: Claim partially sustained

STATEMENT OF CLAIM:

Claimant H.U. Owen, III appeals 30 Day Actual Suspension imposed effective December 26, 2008, for violation of CSX Operating and Safe Way Rules following vehicle accident on Thursday, October 16, 2008, at approximately 1430 hours while operating CSX vehicle #A3323D near milepost 000392.1 on the Boyles Terminal Subdivision.

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 August 10, 2000, and holds seniority rights in the Engineering Department in the position Assistant Foreman. On Thursday, October 16, 2008, he was Flagging Foreman operating vehicle #A3323D at approximately 1430 hours near milepost 000392.1 on Boyles Terminal Subdivision. He was checking to see if there was a clear way for two hi-rail welding trucks to go south around equipment operated by men changing out a crossover at 13th Street when he had an accident resulting in damage to his and a parked vehicle assigned to Employee Miller. By Notice dated October 30, 2008, he was charged as a result of an at-fault accident with possible violation of CSX Operating Rules General Rule A, and General Regulation GR-2(4), GR-5 and GR-6 and CSX Safe Way Rules GS-5E and ES-13B.

Following Investigation on December 4, 2008, Claimant received Notice of Discipline dated December 22, 2008, from Michael Bossone, Division Engineer, which concluded that Claimant was in violation of all Rules charged except Safe Way Rule ES-13B. Mr. Bossone advised "based upon my finding of guilt and the seriousness of the offenses, it is my determination your discipline to be assessed is a 30 calendar day suspension, starting Friday, December 26, 2008, up to and including January 24, 2009. Claimant appealed Carrier Notice of Discipline by document witnessed January 6, 2008. During three years prior to date of accident,

Claimant received a discipline letter having signed waiver and accepted 15 days actual suspension incident May 2, 2007.

Under cited CSX Operating and Safe Way Rules, Employees are required to:

- Know and obey rules and special instructions. General Rule A
- Behave in a civil and courteous manner and must not be careless or incompetent. GR-2 (4)
- Exercise care and economy in the use of railroad property and return in good order all property assigned to them upon demand by proper authority. GR- 5
- Keep the railroad premises clean, orderly and safe condition and must not mar, deface or destroy any railroad property. GR-6
- Immediately report to the train dispatcher or supervisor all incidents involving equipment and any other incident involving loss or damage to CSX property. GS-5E

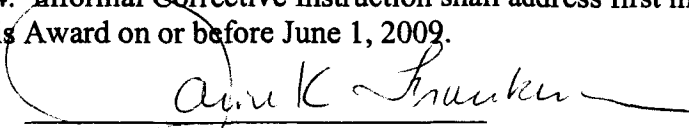
Claimant immediately reported accident to Roadmaster Collier and Employee Miller. Claimant was alone in his vehicle. Miller vehicle was parked and unoccupied. Collier, Claimant and Miller visited accident site following day and sketch was made. Claimant provided written statement at Collier's request: "While backing out from NE of 13th Street by high signals, attempted to back around truck. Had to go on a slight hill and went into a small ditch which the truck almost got stuck in. Pulled forward and then accelerated backwards to get through ditch. Upon doing so the truck slid westward in the loose ballast and struck vehicle #91057 on the front drivers side bumper." Claimant was not advised Union could be present. Formal insurance claim submitted by telephone by Roadmaster. Claimant did not believe he was careless or incompetent in driving vehicle resulting in unintentional damage to his and Miller's vehicles.

If proven, Carrier charges constitute serious offense 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. It appears earlier discipline accepted for May 2, 2007, incident was based upon second serious offense. Consistent with IDPAP, this offense was also chargeable as a second serious offense.

Carrier failed to offer opportunity to contact union before reducing statement to writing. Carrier witness testimony was impeached and refuted by Claimant at investigation relative to reporting of accident and relevant detail. Carrier failed to provide substantial evidence in support of charges against Claimant. Minor Offenses under IDPAP include "(a)ll at fault vehicle accidents that do not meet the criteria of a Serious Offense." Informal corrective instruction is appropriate to handle this first minor offense in a three year period. Claimant appeal is properly partially sustained.

AWARD

Discipline shall be stricken from Claimant record and he shall be made whole consistent with CBA Rule 25, Section 4. Informal Corrective Instruction shall address first minor offense. Carrier shall comply with this Award on or before June 1, 2009.


Janice K. Frankman, Chairperson
Neutral Member

Dated: May 8 2009