

PUBLIC LAW BOARD NO. 7288

AWARD NO. 6
CASE NO. 6

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:

Claimant S.M. Bukaczeski appeals time out and five day overhead suspension imposed for failure to properly perform duties as an Employee In Charge and safely perform assigned responsibilities in violation of CSX Operating and Safe Way Rules GS-1, bullet 4; General Rule A; GR -2 (4-6) and Rule 600, in connection with a derailment that occurred at approximately 1740 hours on Monday, January 19, 2009, on class track 48 at Frontier Yard, Buffalo NY when Engine 8629 assigned to Train Y21819, making eastward movement to grab a cut of cars, derailed causing \$2346. damage.

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 9, 2001, and holds seniority rights in the Engineering Department in the position Foreman assigned to Broadway Frontier Yard, Buffalo NY. On January 19, 2009, he was Employee in Charge of timber gangs 5QD7 and 5Q76. He was given authority to protect tracks 51 through 46 and crossover by West Yardmaster. He was working with 5QD7 on the 5 to 6 crossover where tracks 46 and 47 come onto the lead. Gang 5Q76 was working on the switch on the lead that goes to tracks 52 and 51. Neither gang was working on track 48 and no derail was applied to it. Flop up derails were applied at tracks 46, 47, 50 and 51 with orange locking devices, and a portable derail with locking device was applied on the lead for tracks 48 and 49.

Claimant left work at 1600 after removing all protection and scrap materials and spiking out timbers which had been put. The following day he and co-employee Chase were called in to a meeting with Roadmaster A. Kurec. They were told Engine 8629 had derailed on track 48 at

about 1740 the day before and were cautioned to ensure all derail devices were released. Detail of the derailment was not discussed.

By Notice dated February 6, 2009, from J. Brass, Engineer of Track Claimant was directed to investigation and was advised as follows:

. . . . The Y21819 derailed their locomotive on a portable derail that you allegedly left on the track, in a derailing position, while you were the Employee in Charge earlier that afternoon. This resulted in a Human Factor caused derailment of Train Y21819, which resulted in approximately \$2,346.00 in damage.

Following Investigation on March 17, 2009, Claimant received undated Notice of Discipline from G.W. Mellish, Division Engineer, which concluded that he had been found guilty as charged. Discipline was based upon charged offenses and Claimant's personal record. Claimant appealed on April 9, 2009. During three years prior to date of accident, Claimant accepted time out with 5 days overhead suspension for incident on 10/18/07.

Under CSX On-Track Worker Rules and Qualifications, 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; willfully neglect their duty or endanger life or property. GR-2 (4-6)
- Ensure that work areas and environment are clean, orderly and protected from controllable hazards. (GS-1, bullet 4)
- Not perform work that will interfere with the safe passage of trains or is not properly protected or in accordance with operating rules. (Rule 600)

Roadmaster A. Kurec was notified about 1745 on date of incident by Trainmaster T. Moore that Engine 8629 had derailed. They investigated the scene of the derailment at about 1800, and each prepared an incident report. In field 48 of his report, Trainmaster wrote, "Y21819 crew going into 048 running lite derailed due to joint bolts that broke." In fields 50 and 51, the Human Factor Section, he checked that railroad had determined that one or more railroad employees was a primary or continuing cause of the accident, and that some, but not all of the employees who were a primary or contributing cause of the accident had been identified. Mr. Kurec provided Mr. Moore with Claimant's name identifying him as the primary cause of the accident for completion of field 52 of his Report. See , Company Exhibit G. In his report, Mr. Kurec stated, ". . . CSXT 8629 axels 4/5/6 derailed on a flop derail that was left up. Cause Code: H993 – Human Factor Track" Company Exhibit C. He testified at investigation as to the cause for derailment:

. . . . After I investigated the derailments, myself and trainmaster, as I stated earlier, we saw that there was a flop derail on track 48 and that was the principal cause of derailing engine CSXT 8629, . . . TR, page 15, lines 10-13

He also testified Claimant told him the following day that he must have forgotten the derail on track 48. He described the difference between a flop (permanent) and the portable derail

referenced in the charges against Claimant. He referred to photos of the rear of the derailed engine and flop derail he identified as the cause of the accident which he agreed did not have a lock required to apply the derail. He corrected an error on his map of the incident site to properly identify the location where Claimant had been working. He agreed that there were 10-12 inches of snow on the ground the day of the incident and that others were working in the area between the time Claimant left and the derail occurred.

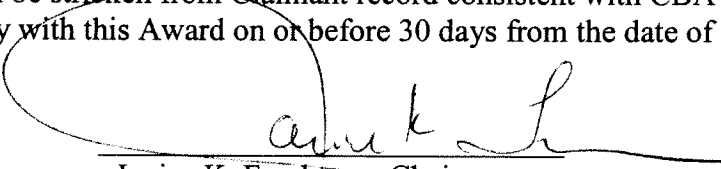
Charging officer Engineer of Track J. Brass investigated the site of the incident with Mr. Kurec on January 22, 2009. They drafted the charge letter together. The charges were based on Mr. Kurec's statement to Mr. Brass that Claimant had told Mr. Kurec that he had left on the derail. Mr. Brass deferred to Mr. Kurec to describe the type of derail he saw when he inspected track 48 and which did not have a lock devise.

Claimant disputed Carrier testimony relative to where he was working and how authority was provided. He detailed what he had done to protect the site for which he was given authority. He denied telling Mr. Kurec that he had forgotten to remove the derail on track 48. He submitted a map of the work site which identified derails which he applied and removed at the end of his shift which differed from Carrier's map. He denied any wrong-doing asserting that he had left the site in a condition safe for engine travel.

Carrier failed to provide substantial evidence in support of charges against Claimant. Its testimony and evidence was internally inconsistent and largely unsupported. It raised significant doubt with regard to Claimant's alleged responsibility for the incident. Trackmaster whose report formed a basis for the discipline did not testify and Charging Officer who testified had no personal knowledge of the incident. To some extent, Carrier provided support for Claimant's otherwise unrebutted evidence and testimony. It is appropriate to sustain this Claim.

AWARD

Discipline shall be stricken from Claimant record consistent with CBA Rule 25, Section 4. Carrier shall comply with this Award on or before 30 days from the date of execution.


Janice K. Frankman, Chairperson
Neutral Member

Dated: June 10 2009