

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 21, (Case No. 21)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE
(Organization File: D70823512)**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2012-134319)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Miller, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged J. Hudak with violation of Operating Rules - On-Track Worker Rules and Qualifications - Rules 601, 609, 700, 704 (3) and 704 (5a) and was substantial evidence adduced at the Investigation on September 26, 2012, to prove the charges; and was the discipline assessed in the form of permanent dismissal warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and, that the Board has jurisdiction over the dispute.

The Board has thoroughly reviewed the record and found that the Carrier complied with Rule 25 of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

On July 25, 2012, Claimant was directed to attend a formal Investigation on August 14, 2012, which was mutually postponed until September 26, 2012, concerning in pertinent part the following charge:

"...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 0534 hours on July 19, 2012 at or near mile post BAC 64.4 on the Old Main Line Subdivision, in the vicinity of the control point at Satterwhite. It is alleged that while you were piloting the shoulder ballast cleaner into the clear you were issued an EC-1 from the EAS Point of Rocks to the EAS Satterwhite and you allowed the machine to pass the EAS Satterwhite. In addition, when the machine went into the interlocking it encountered a trailing point switch that was lined in reverse, causing the equipment to run through the

switch. It is also alleged that following the incident and during the initial investigation, you made attempts to hide the responsibility you had in the incident.

In connection with the above incident, you are charged with failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules - On-Track Worker Rules and Qualifications - Rules 601, 609, 700, 704 (3), and 704 (5a)."

On October 16, 2012, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of permanent dismissal. On November 15, 2012, the Claimant requested expedited handling of his case as provided for in Appendix (N) Expedited Discipline Agreement of the June 1, 1999 BMWE/CSXT Agreement.

The undisputed facts indicate that on July 19, 2012, Claimant was the Employee In Charge (EIC) assigned to pilot a shoulder ballast cleaner on the Old Mainline Subdivision under a 707 track authority. It was near the end of his workday and his 707 was close to its expiration. Claimant then obtained an EC-1 track authority from the Train Dispatcher. The Train Dispatcher gave the Claimant track authority from EAS Point of Rocks to EAS Satterwhite, but the Claimant erred and wrote WAS Satterwhite as the end of his track authority on his EC-1 which is located beyond EAS Satterwhite. When the Claimant's equipment approached EAS Satterwhite, the Dispatcher instructed the Claimant to stop until a MARC passenger train, that was coming from the opposite direction, cleared the signal. After the passenger train cleared the signal, the Claimant instructed the shoulder ballast cleaner operator to continue beyond the signal at EAS Satterwhite without notifying the Dispatcher which put the equipment outside of its authorized track authority and in the process the equipment ran-through a powered switch at the wye, that was still lined for the MARC train's movement.

Claimant reported the incident to Roadmaster Owen Smith a few minutes after it occurred. Mr. Smith was questioned on page 27 of the transcript about the incident as follows:

"Helene: Did you interview Mr. Hudak at the scene?"

Smith: Yes.

Helene: Did he make any kind of verbal acceptance of responsibility for the machine going into the interlocking?

Smith: No.

Helene: What did he, did he continue to contend that the MARC train must have damaged the switch?

Smith: **Initially, but as the facts became more present, the next contention was it must have been a dispatcher error."**

It is the Carrier's contention that even though Claimant admitted on page 63 of the transcript that the shoulder ballast went out of its limits and damaged the switch he had been less than forthright about the incident when he was first questioned by Roadmaster Smith whereas the Organization argued the Claimant did not attempt to hide any information related to the incident inasmuch as he based what he told Roadmaster Smith on what had been relayed to him by Loram Supervisor D. Burkett and employee D. Leonard as he was not on the machine when the incident happened.

The Claimant asserted that he did not initially report the accident accurately because he had been misinformed by others. That argument overlooks the fact that the Claimant was at the site and should have known what transpired. On page 40 of the transcript D. Burkett, Supervisor for Loram Maintenance of Way was questioned as follows:

"Griffith: **When the machine was operated between EAS Point of Rocks and Satterwhite, Mr. Hudak was or was not on that machine with you?**

Burkett: **No, he was at the switch."**

On page 42 and 43 of the transcript it became clear where the Claimant was when the incident occurred as the questioning of Burkett continued as follows:

"Griffith: **...Satterwhite, why did the machine move again?**

Burkett: **Because I was instructed to clear the switch and stop.**

Griffith: **Instructed by who?**

Burkett: **Hudak.**

Griffith: **Okay. But he wasn't there correct? How did he instruct you to do that?**

Burkett: **Over the radio, and he was at the switch, that's what I've already stated.**

Griffith: **Who was at this switch at the East Absolute Signal at Satterwhite. You let Mr. Leonard off...**

Burkett: At the switch.

Griffith: ...at the switch, and you visually saw Mr. Hudak, and he told you to continue on to the WAS Satterwhite, is that right?

Burkett: No. He told me to clear the switch and stop.

Griffith: Clear what switch?

Burkett: The switch at the EAS. That's where the switch is located.

Griffith: And he told you to do that on the radio, is that right?

Burkett: Yes.

Griffith: But you didn't see him, or you did see him?

Burkett: I did see him at the switch. His truck was parked at the switch and he was standing there. *(Underlining Board's emphasis)*

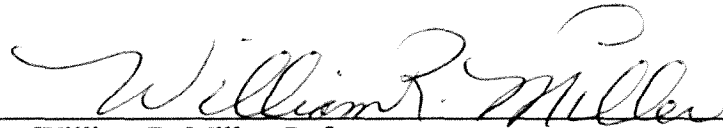
Burkett's testimony was not effectively refuted that the Claimant was on site and allowed the machine to pass the EAS at Satterwhite. The Claimant was the EIC and under Rule 609 the EIC is responsible for the positioning of switches and must visually determine that switches are properly lined for the movement's intended route, a task that he did not complete.

Additionally, it is clear that under the various Rules covered by the charges the EIC was responsible to conduct a job briefing with all employees working under his authority, and re-job brief at each control point which the Claimant failed to do. The record also show that the Claimant told the Dispatcher that the MARC train had run through the switch which could not have happened because it had a facing-point movement and lastly he suggested to Roadmaster Smith that the Dispatcher gave him an incorrect authority and it was the Dispatcher's fault the switch was run-through. Claimant's on site interview with the Roadmaster "flip flopped" as he tried to adjust his story to protect himself and his testimony at the Investigation is best described as self-serving and is not as credible as that offered by the various other witnesses. It is determined that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had a little less than five years of service. Occupying track without authority is considered to be a "Major Offense" under the Carrier's IDPAP Policy, for which an employee is subject to dismissal for a single occurrence and under the same Policy a run-through of a switch that caused damage to equipment is considered a "Serious Offense". Claimant was guilty of both and that coupled with two prior offenses one of which involved falling asleep while driving a company vehicle that caused serious damage to the vehicle indicates the discipline was appropriate. The Board finds and holds that the discipline assessed was not arbitrary, excessive or capricious and was in accordance with the Carrier's Progressive Discipline Policy. The discipline will not be set aside and the appeal/claim is denied.

AWARD

Appeal denied.

A handwritten signature in cursive script, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Referee

Dated: May 20, 2013