

Parties Brotherhood of Maintenance of Way
To Employees' Division
and
Dispute CSX Transportation, Inc.

Statement of Claim:

1. *Carrier's decision to impose discipline in the form of a ten (10) day actual calendar suspension upon Claimant T. Brown for the alleged violations of CSXT Operating Rules – General Rule A, Operating Rules 43 and 605 in connection with allegations that he failed to place a temporary reduce speed sign and a temporary end restriction sign near Mile Post XXB 19.8 on January 23, 2013 is unjust and unwarranted (System File D13904913/2013-143650).*
2. *As a consequence of the Carrier's violation described in Part 1 above, Claimant shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."*

Findings and Decision:

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.

T.C. Brown(Claimant), ID No. 378000, a track inspector, was charged with an incident that occurred at approximately 1100 hours, on January 23, 2013, at or near milepost XXB19.8, on the A&WP Subdivision, in the vicinity of Fairburn, GA. It was alleged he failed to place a temporary reduce speed sign and a temporary end restriction sign. After a hearing held on March 19, 2013, and based on testimony and evidence presented, it was determined that Claimant violated CSXT General Operating Rules - General Rule A and Operating Rules 43 and 605. The discipline assessed was ten (10) days actual suspension to be served in conjunction with a five (5) days overhead suspension, for a previous violation that occurred on October 20, 2012 for a total of fifteen (15) days suspension.

First, the Organization's assertion that the Carrier's failure to reschedule the March 19, 2013 hearing constituted a procedural violation of the Agreement will be addressed. The record shows a prior hearing date had been postponed and the Carrier had given a notice of hearing of the March 19, 2013 hearing date to the Organization. On the day of March 19, 2013, the Organization called to inform the hearing officer of a need to postpone the hearing and indicated that the Claimant and his representative would be unable to attend. The hearing officer decided to proceed with the hearing. The hearing officer included in the record that the Organization "overlooked the fact that this hearing was scheduled for today". There was

no other reason given by the Organization for failing to attend the hearing. Rule 25(d) does allow a postponement for a "valid reason". In this case, the Organization neither made a timely request for a postponement, nor was the request based on a good reason. Therefore the hearing officer correctly exercised his discretion to proceed with the investigation. Based on the above, the Organization's procedural objection is denied.

In addition, the Organization argues that the Carrier failed to give it notice of the March 19th hearing date. This argument is rejected because the letter dated February 27, 2013 was mailed to Claimant and sent to the Organization via electronic mail. Therefore, the record supports the conclusion that notice was given. Even the Organization knew to call the hearing officer on the day of the hearing. Thus, the decision to proceed with the investigation and hearing was reasonable in this case.

The merits of the dispute will be addressed. After reviewing the record, it shows Claimant violated the rules by not placing a warning sign or temporary speed restriction sign either of the beginning or end of the speed restriction on the defective section of track. Claimant offered no justification for his action. Claimant knew or should have known that he was required to place the appropriate sign at the beginning and end of the restriction in order to promote a safe passage of the trains passing through the area.

The Carrier has proved by substantial evidence that Claimant violated General Rule A, because Claimant did not place the appropriate signs at the location of the defect in the track. Also the Carrier proved by substantial evidence that Claimant violated Rule 43. Claimant violated this rule when he failed to display the appropriate signage at the beginning and end of the restricted area. Finally, the Carrier proved by substantial evidence that Claimant violated Rule 605 which requires that "proper signs are displayed". Claimant failed to display the appropriate signs.

Claimant was assessed discipline which was justified based on his prior work record and the instant offense. Therefore, the discipline issued in this case was warranted.

Award:

The claim and appeal is denied, in accordance with the Findings and Decision.

12/18/13
Award Date

Lamont M. Walton
Lamont M. Walton, Referee