

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
CASE NO. 36, AWARD NO. 36**

**Brotherhood of Maintenance of Way
Employees Division – IBT Rail Conference**

v.

CSX Transportation Inc.

**Patrick Halter, Neutral Member
Robert Paszta, Carrier Member
Andrew Mulford, Organization Member**

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. Carrier’s imposition of discipline in the form of a ninety (90) calendar day actual suspension, beginning March 20, 2013 and ending June 17, 2013 upon Claimant C. Simpkins for the alleged violation of CSXT Operating Rules – General Rule A and On-Track Worker Rules and Qualifications – Rule 707 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D70808613/2013-144493).
2. As a consequence of violation referred to in Part 1 above, Claimant Simpkins shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”

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 this dispute.

Claimant entered on duty on May 17, 2010, whereupon he established and maintains seniority as an Assistant Foreman in the Track Department. On March 19, 2013, Claimant was Employee in Charge (EIC) for the area between Mile Posts 122.9 and 126.1 in the vicinity of Walkerford, Virginia. On the morning of March 19 Claimant conducted a job briefing for Foreman Thomas and his switch tie gang and for signal maintainers led by Signal Maintainer Thompson. The gang and maintainers were replacing ties, switches and equipment at the Riverville Switch (Mile Post 125.2 CAB) which is an area within Claimant’s track authority. Claimant instructed them that any change or deviation from the job briefing must be reported to him.

Later during the day on March 19 Foreman Thomas notified Claimant by radio that “we’re done with the switch and derail” and “headed your way” to the Walkerford Switch. Claimant interpreted Foreman Thomas’ comments as completion of work at the Riverville Switch by the gang and signal maintainers; however, the maintainers had not completed their tasks and remained at Riverville. When Foreman Thomas arrived at Walkerford, he met Claimant and stated do not forget the signal maintainers. Approximately one (1) hour later Claimant received a radio communication from Signal Maintainer Thompson stating they were behind schedule but would complete the work at Riverville. Shortly after the maintainers completed their tasks at the Riverville Switch and cleared the track, a train passed on the track where they had been working.

On April 18, 2013, a formal investigation convened to determine whether Claimant erred in authorizing the train to pass through his area of authority as Claimant did not inform signal maintainers that he had authorized the train while they remained engaged in work at the Riverville Switch.

On May 9, 2013, the Carrier imposed a sixty (60) day suspension of Claimant for violating Rule A (know and obey the rules) and for violating On-Track Worker Rules and Qualification – Rule 707, Part 3.c wherein an EIC can “not permit a train or OTE to enter the working limits unless and until you know that working limits or the portion of the working limits that the train or OTE is to use is clear of all equipment and safe for the movement.” The 60-day suspension was to be served consecutively with a prior thirty (30) day suspension for a record 90-day suspension.

On May 22, 2013, the Organization informed the Carrier this appeal was an expedited adjudication.

CARRIER’S POSITION:

Foreman Thomas informed Claimant by radio communication that they were moving from Riverville to Walkerford and the signal maintainers were remaining at Riverville. Gang members overheard this communication to Claimant and Foreman Thomas, upon arriving at Walkerford, reminded Claimant that signal maintainers remained at Riverville. Foreman Thomas left Walkerford prior to the train’s passage that Claimant had authorized. Although Claimant initially testified that Foreman Thomas’ reminder about the maintainers at Riverville occurred after the train had passed through, Claimant changed his testimony and acknowledged that Foreman Thomas departed Walkerford before the train arrived. In other words, Foreman Thomas’ reminder to Claimant about the maintainers at Riverville occurred prior to the train’s passage.

While Claimant was at Walkerford, Signal Maintainer Thompson used radio communication to inform him they were behind schedule at Riverville but would complete the work soon. Thompson did not contact Claimant when they completed the work and cleared the track and Claimant did not contact Thompson or other signal maintainers to ascertain their clearance of the track prior to the train passing through.

Erratic radio communications do not insulate Claimant from performing his duty as EIC to confirm that the work is completed and all personnel and equipment are clear of the track prior to authorizing a train's passage. Regardless of the quality or clarity in radio communications, Foreman Thomas met Claimant at the Walkerford Switch and stated that the maintainers remained at the Riverville Switch and Signal Maintainer Thompson also communicated to Claimant at Walkerford that they were behind schedule at Riverville. Claimant responded to Signal Maintainer Thompson by stating not to be concerned about the work at Walkerford. These communications establish that Claimant knew the signal maintainers remained at Riverville yet Claimant authorized a train to use the tracks.

As Claimant violated Rule A and Rule 707, discipline is warranted and justified. The violation of Rule 707 is a major offense; this is Claimant's second major offense within a six (6) month span of time. Claimant, a short term employee, placed the safety of his co-workers at risk. Arbitrators have upheld discipline up to dismissal for infractions of this type. The 60-day suspension should remain undisturbed.

ORGANIZATION'S POSITION:

Claimant informed Foreman Thomas and Signal Department employees at the job briefing on March 19 to notify him should there be any assignment changes that day. When Foreman Thomas notified Claimant they were headed to Walkerford, Claimant reasonably interpreted that as including Signal Department employees. Foreman Thomas testified he was unsure whether Claimant heard the Foreman's statement that Signal Department employees remained at Riverville as radio communications were erratic. Thus, Claimant did not knowingly or negligently violate Rule 707. The Board is not precluded from considering mitigating circumstances in its assessment of the discipline imposed on Claimant.

CONCLUSIONS:

The burden of proof resides with the Carrier to establish the facts that support the discipline imposed on Claimant. Foreman Thomas' radio communication to Claimant that they were "headed his way" was reasonably interpreted by Claimant, at the moment of its reception, as including the maintainers along with the gang. Radio communications were of poor quality in transmission and reception such that Foreman Thomas recognized in his testimony Claimant may not have heard the Foreman state that the signal maintainers remained at Riverville.

When Foreman Thomas met Claimant at Walkerford and reminded him not to forget about the maintainers, the prior radio communication was clarified for Claimant's understanding. Coupled with the Foreman's statement was visual confirmation that maintainers were not present with the Foreman at Walkerford. Once Claimant knew the maintainers were not with Foreman Thomas at Walkerford, he did not initiate any contact with them to confirm their status at Riverville and alert them to the oncoming train.

In addition to Foreman Thomas' reminder to Claimant at Walkerford, Claimant received another confirmation that maintainers remained at Riverville, thereby resulting in a split crew, because Signal Maintainer Thompson communicated with Claimant about lagging behind the scheduled work at Riverville.

In the Board's review of the record, Foreman Thomas and Signal Maintainer Thompson acted in accordance with Claimant's job briefing instruction. The communications to Claimant at Walkerford constitute substantial evidence that Claimant knew the crew split with the signal maintainers remaining at Riverville and the switch gang moving on to Walkerford. When Claimant met Foreman Thomas at Walkerford and was reminded about the maintainers at Riverville, Claimant initiated no action to inform or forewarn the maintainers that a train was in transit. This violated Rule 707 and General Rule A.

The 60-day suspension for this major infraction, the second occurrence of a major infraction by Claimant within 6 months, is not excessive or punitive. The discipline reinforces the emphasis placed on and importance attached to the EIC's duty to confirm the safety of personnel prior to exercising EIC authority for a train's passage.

Since the charge is proven and is not arbitrary or excessive, there is no violation of the Agreement. Consequently, the claim will be denied.

AWARD

Claim denied.

Patrick Halter /s/

Patrick Halter

Signed on this 13th day
of December, 2013