

AWARD NO. 3

Case No. 3

Organization File No. A090520

Carrier File No.

PUBLIC LAW BOARD NO. 7460

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1) The discipline [thirty (30) day suspension] imposed upon Mr. C. Croghan by letter dated March 25, 2009 for alleged violation of P&L General Rules B, H and M, in connection with charges of allegedly failing to properly report that the old wye switch at Dawson Springs, KY was run through on February 5, 2009 and allegedly denying it had occurred in an alleged attempt to cover up said incident was arbitrary, unwarranted, unreasonable and in violation of the Agreement.

2) The appeal as presented by Vice Chairman T. Petty to Assistant Vice President - Transportation and Labor G. James on May 20, 2009 shall be allowed as presented because said appeal was not disallowed in accordance with Rule 31.

3) As a consequence of the violation referred to in Parts (1) and/or (2) above, the appeal shall be allowed as presented and Mr. C. Croghan shall receive the remedy prescribed by the parties in Rule 30(g).

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On February 5, 2009, Claimant was assigned to perform flagging service for a bridge contractor in the Vicinity of Dawson Springs, Kentucky. When the work was ready to begin, Claimant directed the contractor's employees to move their equipment out of the wye track. Once out of the track, it was discovered that one of the trucks had a fuel leak. Consequently, he directed that all of the equipment be returned to the wye track. When the equipment had cleared the switch, Claimant placed a derail on the wye track to protect the equipment. He did not, however, realign the switch back for the siding.

The operator of a pickup truck asked Claimant if he could move the truck from the siding to the main line. Claimant told the operator to get ready for the move, but did not line the switch. The operator moved the truck, apparently before Claimant told him he could do so, causing the truck to run through the switch. Rather than report the switch being run through, Claimant contacted a trackman to repair the switch. The trackman then reported that the switch had been run through.

Claimant was subsequently directed to attend a formal investigation at which he was charged with authorizing the contractor to operate through the switch and failing to report the incident. Following the investigation, Claimant was assessed a thirty day suspension.

At the outset, both the Carrier and the Organization have raised procedural objections. The Carrier argues the claim, when first filed by letter dated May 20, 2009, was presented to the wrong official. The claim was addressed to Vice President Transportation & Labor, G. I. James, but the Carrier asserts it should have been presented to AVP/Chief Engineer G. F. Gupton. The Organization contends the claim was not denied within the sixty day time limit.

With respect to the Carrier's objection, we note that when the claim was later properly progressed to Mr. James, he responded by stating, "The Organization filed the initial claim/appeal with the improper Carrier Officer committing a fatal error of which the Carrier took no exception at the time but hereby notifies the Organization that it reserves the right to do so at a later date." We take this statement to be a waiver of any objection the Carrier might have had. We will, therefore, give it no further consideration.

As for the Organization's objection, we note the Carrier has asserted Mr. Gupton responded to the initial claim by letter dated June 30, 2009, a copy of which is part of the record before this Board. We accept the Carrier's assertion that the denial was mailed, and it appears that the Organization, in a letter dated May 19, 2010, advised the Carrier that it had been sent to an incorrect address. We note that the initial claim letter did not have a mailing address for Vice Chairman Petty, who filed the claim. We can only presume that the Carrier sent it to his address of record. Under the circumstances, we cannot make a determination that the Carrier failed to issue a timely denial of the claim.

Turning to the merits of the case, we note that the letter assessing the discipline to Claimant stated:

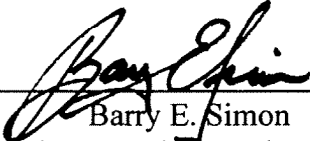
A review of the facts presented during the formal investigation and recorded in the transcript revealed that you failed and/or refused to properly report that the old wye switch at Dawson Springs, KY was run through on February 5, 2009, and denied that it had occurred in an attempted [*sic*] to cover up said incident. Your actions placed you in violation of the P&L's General Rules B, H, and M.

It is apparent, therefore, that Claimant was not disciplined for authorizing the move through the switch, but only for not reporting it. We find that the evidence of record supports the Carrier's


conclusion in this regard. Although the Organization argues that Rule M refers only to “the condition of equipment and tools which they use in performing their duties,” we conclude this rule refers to all equipment, including freight cars and track switches.

Under the circumstances, the Board finds that the charge for which Claimant was disciplined was proven and the discipline imposed was neither arbitrary nor excessive. The failure to report incidents of this nature is a serious offense. The Agreement was not violated.

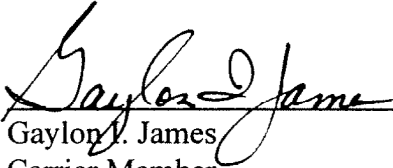
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Timothy W. Kreke
Employee Member



Gaylon L. James
Carrier Member

Dated: July 24, 2011
Arlington Heights, Illinois