

**BEFORE PUBLIC LAW BOARD NO. 5896**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION**

**Case No. 181**

**STATEMENT OF CLAIM:**

Appeal of ten-day suspension of Claimant R.E. Paul for working on track without authority, as a result of investigation conducted on September 18, 2001.

**FINDINGS:**

Claimant R.E. Paul was employed by the Carrier as a Welder Helper during the time period relevant to this matter.

On September 13, 2001, the Claimant was notified to appear for a formal hearing and investigation into charges that he and Welder Cross had performed welding work on #1 track outside of the eastern limit of the Welder's Form D, Line 4 Authority #H210 without proper or additional authority. The hearing was conducted on September 18, 2001. As a result, the Claimant was found guilty of violating NORAC Rule 132 and Carrier Roadway Worker Safety Rules, and assessed a disciplinary suspension of ten working days.

The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier contends that the violation at issue was discovered when the Claimant had to flag down a train that was moving toward his unprotected work location at or near milepost 20.6 on the McCook Subdivision. The Carrier maintains that the Claimant was proven guilty as charged in that he did occupy controlled track without proper authority. The Carrier asserts that

the Claimant admitted his violations, so the only remaining question is the issuance of the discipline.

The Carrier acknowledges that Welder Cross primarily was culpable, but the Claimant does bear responsibility in this matter because he failed to utilize the knowledge provided by the Carrier for his own protection. The Carrier argues that given the severity of the situation and the possibility of serious damage and harm, the ten-day suspension must be viewed as lenient.

The Carrier further asserts that the Organization's assertions regarding the dispatcher are unsupported and irrelevant. The Carrier emphasizes that the issue here centers on the inappropriate handling of the situation by the Claimant and Welder Cross. The Carrier additionally argues that the transcript is complete, and the Organization's failure to point out any specific fault demonstrates that its complaints about the transcript represents only the Organization's attempt to skirt the serious issues present in this matter.

The Carrier contends that the claim should be denied in its entirety.

The Organization asserts that the transcript appears to be incomplete. The Organization points out that its objection to a particular witness was not included in the transcript.

The Organization goes on to contend that because the transcript makes clear that Welder Cross was the one primarily responsible for the incident at issue, the Carrier cannot justify giving a ten-day suspension to the Claimant. The Organization emphasizes that at the time of the incident, the Claimant had been an employee for only five months, and a welder helper for four months. The Claimant was not physically qualified on the territory, did not read the authority, and was not given a job briefing.

The Organization further argues that the transcript demonstrates that the Carrier has two

sets of standards: one for BMW employees and another one for train dispatchers. The Organization maintains that the train dispatcher who issued the authority in this incident was not held accountable for his actions. Moreover, under NORAC rules, the dispatcher issues authorities by control points, not mileposts. The Organization points out that Welder Cross requested authority at Milepost 20.6, not a control point, but the train dispatcher issued the authority without requesting a control point. The Organization argues that the transcript demonstrates that the dispatcher issued an authority without knowing the location, yet the dispatcher was not held responsible for his actions.

The Organization contends that the claim should be sustained, the Claimant made whole for the ten-day suspension, and these ten days counted toward the Claimant's 2001 vacation qualifying time.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating NORAC Rule 132 and Carrier Roadway Worker Safety Rules. The Claimant admitted his wrongdoing and that he should have been more diligent in his behavior that day.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the wrongdoing and the relative leniency of the ten-day suspension, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously

when it issued the ten-day suspension to the short-term employee. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.



PETER R. MEYERS  
Neutral Member

Dated: \_\_\_\_\_

8/15/08