

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 14

STATEMENT OF CLAIM:

Appeal of suspension of Claimant L. R. Ferguson as a result of investigation held on March 20, 2001, in connection with Claimant's alleged failure to perform his duties in a safe and proper manner.

FINDINGS:

Claimant L. R. Ferguson was employed by the Carrier as a ballast regulator operator at the time of this claim.

On March 8, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with the Claimant's alleged destruction of a signal box at MP CAB 0.9 on the Rivanna Subdivision of the Alleghany Division on March 5, 2001. The Carrier charged the Claimant with failing to perform his duties in a safe and proper manner. The Claimant was withheld from service pending the investigation.

The hearing took place on March 20, 2001. On March 30, 2001, the Carrier notified the Claimant that he had been found guilty of all charges and was being issued discipline of a sixteen-day actual suspension, beginning March 12, 2001, and ending

April 5, 2001. The Carrier further informed the Claimant that he was being disqualified from operating a ballast regulator on any system production team.

The Organization filed a claim on behalf of the Claimant. The Carrier denied the claim.

The Carrier argues that the Claimant was aware that any collision between equipment and other objects is a serious offense. The Carrier maintains that the discipline issued was appropriate to ensure that a similar incident does not occur in the future.

The Organization argues that the Carrier failed to provide the Organization with requested material that the Carrier was going to present at the investigation. As a result, the Organization maintains that the investigation was unfair and not impartial because the Organization was unable to prepare a proper defense on behalf of the Claimant. The Organization contends that the Carrier is in violation of Rule 25 as it failed to provide any statements pertaining to the investigation prior to the investigation.

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

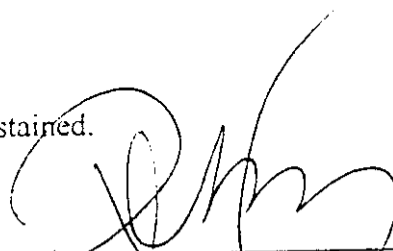
This Board has reviewed the evidence and testimony in this case, and we find that the Carrier failed to meet its burden of proof that the Claimant was the individual responsible for the equipment collision that took place here. There is no question that a signal case was knocked over and destroyed. However, it is not clear from the record that the Claimant was responsible for the accident. The Claimant denied striking the signal

box. There were no eyewitnesses to the accident.

It is fundamental that just because an accident occurs, the Carrier cannot simply hand out discipline. It must be proven that the Claimant who is disciplined is actually the person who is responsible for the accident and the consequential damage. In this case, the Carrier has simply failed to meet that burden of proof and, therefore, this claim must be sustained.

**AWARD:**

The claim is sustained.



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PETER R. MEYERS  
Neutral Member