

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 54

STATEMENT OF CLAIM:

Appeal of the five-day actual suspension issued to Claimant E. H. Lambert as a result of investigation held on December 2, 2003, in regards to Claimant's violation of Rule 707.

FINDINGS:

The Claimant was employed by the Carrier as a foreman at the time of this claim.

On October 21, 2003, the Carrier issued a letter informing the Claimant to appear for a formal investigation to determine the facts and his responsibility in connection with a Loram shoulder ballast cleaner's collision with Ballast Train Engine 5900 at Milepost CLS 51.2 on the Logan Subdivision on October 9, 2003. The Carrier charged the Claimant with possible violation of Roadway Worker Rules Part IV entitled Job Briefing, 707(6), 707(b), and 707(8).

After several postponements, the hearing took place on December 2, 2003. On December 16, 2003, the Carrier notified the Claimant that he had been found guilty of violating Rule IV when he allowed a work train to enter his 707 limits at Milepost CLS 51 without giving the shoulder ballast cleaner any warning or briefing that the train was entering his limits, thereby contributing to the cause of the collision between the ballast cleaner and

the work train. The Carrier informed the Claimant that he was being assessed discipline of a five-day actual suspension, effective January 5 through 9, 2004, with a return to work date of January 12, 2004.

The parties being unable to resolve their dispute, 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 allowing a work train to enter his limits without giving the shoulder ballast cleaner any warning or briefing that the train was entering the limits, thus causing, in part, the ballast cleaner collision with the work train. The evidence is clear that the Claimant was the employee in charge who was responsible for all train and on-track equipment movements within the limits. The rule requires that the employee in charge must know that all trains authorized to pass through his limits have passed before again fouling the track. The Claimant admitted that he gave the work train permission to enter the limits, and he did not tell the shoulder ballast cleaner group that a train was entering the limits. Although the Claimant believes that he complied with the rules, the record contains sufficient evidence that he did not.

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.

The Claimant in this case had previously received several five-day overhead suspensions for attendance problems. The Claimant was proven guilty of a very serious safety violation in this case. However, given his lengthy seniority, this Board cannot find that the five-day actual suspension issued to the Claimant in this case for this violation was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 7/21/04