

AWARD NO. 327
Case No. 327

Organization File No.
Carrier File No. 2017-224799

PUBLIC LAW BOARD NO. 7163

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal) of Mr. C. Bryant, by letter dated July 17, 2017, in connection with allegations that he occupied 707 working limits of an employee in charge and relocated a conditional stop board from the north end of the crossing to the south end without permission was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier's File 2017-224799 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Bryant shall now be '*** immediately reinstated with all back pay, rights and privileges and that all charges be expunged from Mr. Bryant's record.' (Employees' Exhibit 'A-2')."

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 March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The facts in this case are not in dispute. While working as an Assistant Bridge Foreman in the Carrier's Bridge and Building (B&B) Department on May 24, 2017, Claimant set his high rail vehicle on the tracks within the track authority of another employee without first obtaining permis-

sion to do so. In order to accomplish this, Claimant moved the other employee's red boards from one end of a crossing to the other. After this came to the attention of the Carrier, Claimant was directed to attend a formal investigation at which he was charged with occupying the 707 working limits of an employee-in-charge and relocating a conditional stop board without permission. Following the investigation, Claimant was dismissed from service.

At the investigation, it was determined that Claimant had overlapping track authority with another employee, who had placed red boards in the vicinity of the crossing at which Claimant placed his vehicle on the rails. Claimant testified that he made two or three attempts to contact the other employee to obtain permission to enter his protected territory, but the other employee never responded. After five minutes, Claimant moved the red boards approximately thirty feet, under the belief that doing so meant he was not occupying the other employee's track authority. Claimant testified that he was taught to do this by more senior employees.

The Organization offers several arguments in this case. It first asserts the investigation notice did not cite specific rules Claimant was being charged with violating. We cannot find that the parties' Agreement requires such specificity in the investigation notice. Rather, the Agreement requires that the employee be notified of "the exact offense of which he is accused." By specifying the conduct that would be the subject matter of the investigation, we find that the Carrier met its notice obligation under the Rule. Claimant was sufficiently informed of the charge against him and was able to present his defense to the charge.

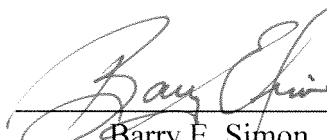
With regard to the merits, the Organization asserts the Carrier's rules do not specifically address the situation of overlapping authorities. It was not until after this incident, says the Organi-


zation that the Carrier issued instructions explaining that what Claimant had done was improper. Furthermore, the Organization argues dismissal was excessive in the case of an eleven-year employee with no prior discipline on his record.

In our review of the record, it is the Board's conclusion that the Carrier had substantial evidence to support its charge against Claimant. Claimant committed two offenses – he moved another employee's red boards and entered that employee's track authority limits without first obtaining permission. These are very serious rules violations. Disciplinary action was warranted.

Without diminishing the seriousness of Claimant's offense, though, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. We make this decision solely upon the basis of Claimant's length of service and the fact that his record contains no prior disciplinary actions.

AWARD: Claim sustained in accordance with the above Findings.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Katrina Donovan
Carrier Member

Dated: 2/4/19
Arlington Heights, Illinois