

AWARD NO. 368
Case No. 368

Organization File No.
Carrier File No. 2017-229741

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: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline [thirty (30) days actual suspension] of Mr. K. Grindstaff, by letter dated November 20, 2017, in connection with allegations that he violated CSXT Operating Rules 100.1 and 2000.2 was arbitrary, unsupported, unwarranted and in violation of the Agreement (Carrier's File 2017-229741 CSX).
2. As a consequence of the violation referred to in Part 1 above, '*** Mr. Grindstaff be immediately reinstated with all back pay, rights, and privileges and that all charges be expunged from his 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.

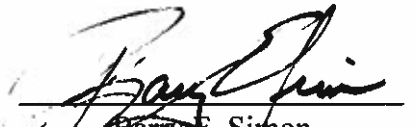

Following an investigation at which he was charged with failing "to properly job brief when you placed your hand in a pinch point/red zone while using a machine that was not necessarily designed for the task," Claimant was assessed a thirty-day actual suspension. The Organization has

argued that the Carrier established that Claimant was injured, but has not proven that he did not properly job brief. In this regard, we note that the discipline notice, dated November 20, 2017, stated Claimant was found to have violated Carrier's Operating Rules 100.1 and 2000.2, neither of which refers to a job briefing. Of particular significance, Rule 2000.2 directs that employees must not place any part of the body where it could be pinched.

There is no dispute that Claimant, while trying to install hook plates, suffered a laceration to his right index finger. This injury occurred as his hand was in a pinch point on an on-track machine. The record shows that this location was clearly marked with a sign reading "PINCH POINT." We find, therefore, that the Carrier had substantial evidence to support its charge against Claimant. As this was his second Serious violation for a safety related incident, we additionally find that the issuance of a thirty-day actual suspension was neither arbitrary nor excessive.

Aside from the merits, the Organization argues it had requested the presence of employee witnesses, but they were not provided by the Carrier. The record indicates that the Carrier was agreeable to releasing the employees to testify in person at the investigation, and offered to have them testify by phone once the investigation had begun, but the Organization had never contacted them to ask them to testify. Under the circumstances, we cannot find that the Carrier denied Claimant the opportunity to have witnesses in his behalf. The Organization has a responsibility to arrange for its own witnesses, and the Carrier, it appears, presented no obstacles to it doing so. The Notice of Investigation advised Claimant that he "may arrange to have present witnesses who have knowledge of the matter under investigation; however, it will be your responsibility to arrange for their participation." The Agreement places no further obligation upon the Carrier.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member
Andrew Mulford
Employee Member
Katrina Donovan
Carrier Member

Dated: 07/15/19
Arlington Heights, Illinois