

AWARD NO. 411
Case No. 411

Organization File No. D91501518
Carrier File No. 18-67602

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline [ten (10) calendar day actual suspension] of Mr. J. Thompson, by letter dated March 20, 2018, in connection with allegations that he violated the CSX Transportation Gage Escalation Policy was arbitrary, capricious, unnecessary and excessive (System File D91501518/18-67602 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Thompson shall be fully exonerated and made whole."

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.

Claimant, J. Thompson, has been employed by the Carrier since October 2, 2000. At all times relevant herein, Claimant was working as a track inspector. On March 20, 2018, following an investigation, the Carrier assessed Claimant a 10-day actual suspension for his failure to follow procedures for track inspection on December 8, 2017, in the vicinity of Marion, Ohio, resulting in

the derailment of six tank cars due to wide gage and poor tie conditions. The Carrier found that Claimant had violated the CSX Transportation Gage Escalation Policy.

On December 8, 2017, six tank cars derailed while exiting the Union tank car facility. An investigation of the track completed by Roadmaster Louis Rector found a section of ties in very poor condition. During his investigation, Mr. Rector took a base gage measurement eight ties west of the derailment spot, where there was no rail damage, as well as a gage measurement at the derailment location. As a result, Mr. Rector determined that prior to the derailment, the gage measured $57\frac{3}{4}$ inches, which allowed the ties to give way and the train cars to fall in along the track. According to the Carrier's Gage Escalation Policy:

- A. Tack Inspectors will record the maximum gage in all yard turnouts and curves adjacent to turnout.
- B. The Roadmaster will inspect and prioritize repairs of all wide gage spots $57\frac{3}{4}$ inch or greater within 7 days. All wide gage spots $57\frac{3}{4}$ inch or greater will be brought into compliance within 30 days.

Claimant had last inspected the track 11 days before the incident. He maintained at the investigation that the worst gage spot on the track at this inspection measured 57 and one-half inches, which would not require gage escalation. He acknowledged at the investigation that during the time between this last inspection and the derailment there were no changes to the track that would have accounted for the change in the gage.

Claimant explained that as he does not carry a laptop computer with him, he writes his measurements on paper and enters them into the computer later. He admitted at the investigation that he has made "clerical mistakes" in recording his measurements.

The Carrier argues that Mr. Rector's measurements of the gage following the derailment objectively show that the gage was at $57\frac{3}{4}$ inches prior thereto, and required escalation so that timely repairs could be made. Claimant, it is undisputed, was the last inspector before the

derailment to inspect that area of track. Though Claimant maintained that the gage was in compliance and he did not violate the applicable policy, the Carrier asserts that his account lacks credibility based on his admission that he has made errors in recording the gage measurements. Mr. Rector's account should be credited, the Carrier urges, and Claimant should be found to have committed the asserted violation.

The Organization notes that there is no claim that Claimant did not timely inspect the track and, though, he was the last one to inspect it, there is no credible evidence that the track measured 57 $\frac{3}{4}$ inches when he inspected it 11 days before the incident. Further, it points out, Mr. Rector admitted that the 57 $\frac{3}{4}$ -inch measurement taken after the incident was merely an estimate. Lastly, the Organization states that the Carrier's derailment report notes that it was a "wide gage" derailment, which is inconsistent with Mr. Rector's estimate of 57 $\frac{3}{4}$ inches since "wide gage" is an industry term of art indicating a track with at least a 58-inch gage. As such, the Organization contends that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence.

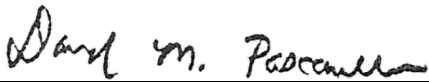
Upon review of the record, we find that the Carrier has met its burden of proof by substantial evidence. Though the Organization argues that Mr. Rector's measurements are merely an estimate and that Claimant is being used as a scapegoat, Mr. Rector's testimony provided a clear explanation of his base gage measurements. In contrast, Claimant's account demonstrated that, by his own admission, there were inconsistencies in his handwritten and electronically recorded measurements for the section of the track at issue, casting doubt upon the trustworthiness of his last measurement. The Hearing Officer's determination that Mr. Rector's account was more credible is amply supported by the record.

With respect to the penalty, although the Carrier did not discipline Claimant for the derailment itself, his conduct posed a serious safety risk which contributed to the incident. We therefore find the Carrier's determination that a 10-day suspension was an appropriate measure of discipline cannot be found unfair, arbitrary or discriminatory.

AWARD: Claim denied.

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Jacalyn J. Zimmerman
Neutral Member

A handwritten signature in black ink, which appears to read "David M. Pascarella".

David M Pascarella
Employee Member

A handwritten signature in blue ink, which appears to read "John Nilon".

John Nilon
Carrier Member

Dated: June 25, 2021