

AWARD NO. 451

Case No. 451

Organization File No. DRA901719

Carrier File No. 19-03821

**PUBLIC LAW BOARD NO. 7163**

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

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

1. The Carrier's discipline (dismissal) of Mr. S. Robbins, by letter dated February 27, 2019, in connection with allegations that he violated CSX Transportation Operating Rules 712.17 and 2008.1.1 was arbitrary, capricious, unnecessary and excessive (System File DRA901719/19-03821 CSX).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must '\*\*\* clear all mention of the matter from Claimant's personal record, immediately return Claimant to service with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the discipline. It also includes health-care, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.' (Employee's 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 disputed. On January 10, 2019 Claimant was operating a ballast regulator while another employee was operating a tamper ahead of him. The tamper stopped for fuel and the Employee In Charge notified Claimant as to the location where the tamper had stopped. Claimant, however, did not stop when he should have, *i.e.*, within half the range of his vision, and the ballast regulator struck the tamper. The tamper operator, who was fueling his machine at the time, was knocked off the platform and suffered a fractured vertebra. Claimant, who was not wearing a seat belt, was thrown out of his seat and struck the air conditioning unit on the inside of his machine. Claimant received two facial lacerations.

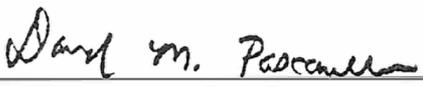
Claimant was directed to attend a formal investigation in connection with this incident. At the investigation Claimant acknowledged that he violated Rule 712.17 by not stopping within half the range of his vision. He also admitted that he had violated Rule 2008 by not wearing his seatbelt. Claimant testified that he could think of no reason why he was unable to stop the machine before striking the tamper. He stated, "I took full responsibility of the machine collision." On the basis of these admissions, the Board must find that the Carrier had substantial evidence to support its charge against Claimant.

At the time of this incident, Claimant had nearly twelve years of service and no active prior discipline. Additionally, we note that the Roadmaster, who testified about how the accident occurred, was asked if he thought Claimant was a good employee. He responded affirmatively. He was then asked if he would like to have Claimant back working for him, and he answered, "Yes, sir, I, it wouldn't bother me at all." Without diminishing the seriousness of Claimant's offense, it is the Board's determination, based upon his record, that permanent dismissal was excessive in this case.

We will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant should understand that, upon his return to work, he will be expected to perform his duties in a safe manner and in full compliance with the Carrier's rules.

AWARD: Claim sustained in accordance with the above Findings. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.

  
Barry E. Simon  
Chairman and Neutral Member

  
David M. Pascarella  
Employee Member

  
John Nilon  
Carrier Member

Dated: 8/9/21  
Arlington Heights, Illinois