

Case No. 457
Award No. 457

Carrier File.: 19-27096

Organization File: DRA8327366

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 (dismissal) of Mr. R. Long, by letter dated April 2, 2019, in connection with allegations that he violated CSX Transportation Rules 103.8, 104.1, 104.2(a),(b), 104.3(e), 104.4(a), 705.3, 705.6(2) and 705.7(4) was arbitrary, capricious, unnecessary and excessive (System File DRA8327366/19-27096 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 to include retirement service accrual and pension payments. It also includes healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.”

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

Claimant, R. W. Long, had been employed by the Carrier since January 19, 2015. At the relevant time, he occupied the position of trackman.

On December 12, 2018, the Carrier notified Claimant to attend a “formal investigation . . . on December 27, 2018 . . . to determine the facts and place (his) responsibility, if any, in connection with information received that on November 30, 2018, at approximately 1029 hours, in the vicinity of Estill, South Carolina, (he) failed to perform the duties of a watchman lookout which may have contributed to the death of an employee, and all circumstances relating thereto.”

On April 2, 2019, following the hearing, the Carrier found Claimant guilty of the misconduct alleged in the notice, in violation of numerous Carrier Transportation Rules.

The core facts of this matter are not in dispute. On November 30, 2018, welder John Youmans and Claimant had been assigned to weld a frog at milepost S 449.7, a straight stretch of track near Estill, South Carolina on the Columbia Subdivision. Mr. Youmans was the employee-in-charge of the job, and the job briefing form he completed that day indicated that Claimant was “the employee in charge of (Mr. Youmans’) on-track safety” and they would be using Watchman/lookout protection. As Carrier witness Director of Track Ron Elliott explained at the hearing, the Watchman is responsible for continuously looking one way and then the other on the tracks to let the other employee know of a train’s approach. Claimant had sufficient sight distance to warn Mr. Youmans. The crew’s truck was parked along the track, facing north.

Sometime after 10 a.m., train F79430 was traveling north on the track where Claimant and Mr. Youmans had been assigned welding duties. The train struck Mr. Youmans on the track, resulting in his death.

The train’s crew provided written statements following the incident and gave consistent testimony at the investigation as to what had occurred. Conductor N.C. Hill testified that once they got to the signal at Estill, they could see something that looked like a trash bag on the tracks but could not really tell what it was. As they got a little closer, it became clear that it was a person, wearing dark clothing, crouched over and facing north, the same direction they were traveling. They could also see a CSX van alongside the track, facing north, with the door open and an employee in the doorway, between the door and the inside of the vehicle. He was also facing north and never turned around to see the train.

Mr. Hill stated that although they blew the horn continuously, they were traveling 45 miles per hour, and it was too late to avoid hitting the employee on the track.

Engineer Sean Lott explained that after the train passed the south end of Estill, they started blowing the horn for the multiple crossings they were approaching. After two or three crossings, they saw a CSX truck on the east side of the track and something that looked like debris on the west side of the track. They continued to blow the crossings, and then realized it was a person on the track, wearing dark clothing, bent over and working on the rail. They also saw the back of an employee at the truck, standing inside the door. He never turned around.

Mr. Lott stated that they were laying on the horn but neither employee appeared to hear the train. The train download showed that the crew blew the horn at several crossings as well as continuously for 51 seconds immediately prior to the incident.

After the train struck Mr. Youmans, Claimant called Roadmaster David Poston, telling him that there had been a bad situation, but he did not describe the specifics of what had happened, nor did he provide any information when Mr. Poston arrived at the scene. Mr. Poston testified at the investigation that Claimant "couldn't talk." Assistant Regional Engineer Jeremiah Davis testified that he also came to the scene, and Claimant refused to give him any information or answer questions.

Claimant gave a written statement the day after the incident. It provided:

On Friday, November 30 of 2018, I arrived at the office on Yemassee, South Carolina to report for work. At 7:00 AM, we began our job briefing and I was informed I would be helping the welder. Our job task was to weld the frog at Estill, South Carolina. We drove to the worksite. Once we arrived at the worksite, my EIC stated that we were going to use watchman/lookout protection. We got all the tools ready and began working on the frog. John began grinding on the frog and once all the grinding was finished, John began his welding. One train approached and I notified John and we cleared up and then split the train to inspect. Once the train was clear of us, we proceeded back to work. John finished up his welding and started grinding. John said to me, "We're done. Start rolling up the welding leads." I turned around to do what I was told and never heard any train horn, and something caught my eye. When I turned around, I seen the train and John was in the track and the train struck John.

The Organization raises numerous procedural challenges to the discipline assessed against Claimant, stating that the Carrier repeatedly violated Rule 25 of the parties' agreement, which, it contends, deprived Claimant of his right to a fair and impartial investigation and requires that the discipline be overturned. The Organization bears the burden of proving such violations.

We have considered these allegations carefully and find them without merit. They are either not supported by reasonable factual conclusions or have been rejected in previous arbitration awards. We therefore proceed to consider the matter on the merits.

The Carrier Rules which govern the instant situation, cited in the discharge letter, provide, in relevant part:

104.1 When on duty, employees must:

1. Devote themselves exclusively to the service of CSX

104.3 The following behaviors are prohibited while on duty . . .

- d. Carelessness, incompetence and willful neglect of duties
- e. Behavior that endangers life or property

705.3 Use train approach warning for on-track safety only if:

1. At least two qualified roadway workers are working together and one of the employees is designated as a Watchman
2. All employees can reach an established place of safety at least 15 seconds before a train or on-track equipment reaches the location
3. A method of communicating the approach of a train is established
4. The employees hold a job briefing and confirm their understanding and responsibilities
5. Employees are performing routine maintenance and minor repairs that will not affect the safe passage of trains and on-track equipment
6. A Watchman lookout knows and maintains required sight distance
7. A Watchman lookout has unrestricted ability to see and hear approaching trains or on-track equipment

705.6

When train approach warning is used to protect only one employee, audible and visual warnings are not required when:

**

2. Watchman can physically touch the employee being protected

705.7

The employee providing Watchman duties for Train Approach Warning must:

**

4. Provid(e) warning sufficient in advance to allow all workers and watchmen to reach the predetermined place of safety at least 15 seconds before the train or on-track equipment reaches the location.

Therefore, the issue in this matter is whether Claimant indeed failed to properly perform his Watchman duties, leading to the tragic result, and, if so, whether the penalty of dismissal is appropriate. We have carefully reviewed the record in its entirety.

The record is clear that on the day at issue, Mr. Youmans was the employee in charge of the job, and Claimant was the Watchman, responsible for providing Mr. Youmans on-track protection. Claimant understood this and, earlier in the day, he and Mr. Youmans acted properly in the face of an approaching train.

At the relevant time, however, Claimant, by his own admission and the testimony of the train crew, had ceased watching the track, had his back to the approaching train, and did not see the train or hear its horn. The train blew its horn repeatedly, and for 51 seconds, enough time for him to warn Mr. Youmans and get him off the track. Because Claimant neither saw nor heard the train, he did not do so, and Mr. Youmans remained on the track where he was hit by the train and killed.

The Organization defends Claimant's conduct on the basis that Mr. Youmans, as the employee in charge, told him that the work was finished and he should begin to roll up the welding leads, which caused him to turn around to begin that task. Even by Claimant's account, however, there is no indication that the two employees held a job briefing, determined that Claimant's Watchman duties had ended, or discussed whether there would be another type of on-track protection.

Mr. Youmans of course cannot provide his account of what transpired, but the objective evidence indicates that the work was not finished, as both train crew members saw Mr. Youmans crouched over on the track, and the fact that neither Claimant nor Mr. Youmans heard the train horn is a strong indication that the noisy track work was ongoing.

However, even accepting Claimant's version of what occurred, he was responsible, before he ceased observing the track, to ensure that Mr. Youmans was either off the track or had some other form of on-track protection, neither of which, as is clearly demonstrated by what occurred, was the case. Again, by his own admission, Claimant simply turned around, assertedly to begin performing another task, and obviously did not know where Mr. Youmans was or what he was doing. Claimant's defense that he had simply done what he was told, even if true, would not excuse the fact that he obviously, as events unfortunately demonstrated, did not have a clear understanding

of the situation and failed to take the safe course. The Carrier has met its burden of proving Claimant's guilt of failing to properly perform Watchman duties by substantial evidence.

With respect to the penalty, Claimant's action was unintentional, and it is apparent that the situation was devastating for him. But in the railroad industry, the work is often dangerous, and the Carrier must be able to trust its employees to take responsibility for following the safest course of action, regardless of the circumstances. Claimant did not do so, even where an error could obviously lead to catastrophic consequences. This is as serious an incident as can occur in the industry. We therefore cannot find that the Carrier's decision to dismiss Claimant in these circumstances represents an unfair, arbitrary or discriminatory exercise of its discretion to determine the appropriate level of discipline.

AWARD: Claim denied.



Jacalyn J. Zimmerman
Neutral Member



Ross Glorioso
Organization Member



John Nilon
Carrier Member

Dated: 8/16/2022