

AWARD NO. 547
Case No. 547

Organization File No. DRA300121
Carrier File No. 21-97305

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissal) of Mr. L. Bruckerhoff, by letter dated January 8, 2021, in connection with allegations that he violated CSX Transportation Rules 103.7(c), 104.1(3), 104.3(d)(e), 401.8 and 707.9(3) on November 11, 2020, was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 300121/21-97305 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 losses suffered. The losses include, but are not limited to, any straight time, overtime, doubletime, or other Carrier provided compensation lost as consequence of the discipline. 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, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The essential facts in this case are undisputed. On November 11, 2020, Claimant was assigned to run a 707 authority as the Employee in Charge in connection with a roadbed stabilization project. While doing so, he cleared a train to operate through his work limits without first lining the switch from the side house track, where the work equipment was on the track, to the mainline. Consequently, the train was directed toward the work equipment. The train crew observed the switch was improperly lined and the engineer made an emergency brake application. The train, however, was not able to be stopped without hitting a dump truck on the track. After a formal investigation in connection with this incident, Claimant was dismissed from service.

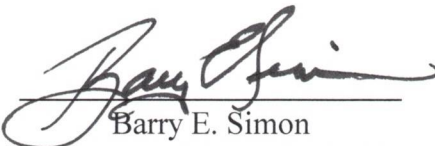
Claimant acknowledged the above facts, and admitted he was in violation of Carrier Rules by clearing the train without ensuring the switch was properly lined. In light of his admissions, the Board must find that the Carrier had substantial evidence to support its charge against him. In reaching this conclusion, the Board has considered the various arguments advanced by the Organization and finds them to be unpersuasive in this case. In particular, the Board finds no merit in the Organization's contention that Claimant was not advised he could seek Union representation before providing a written statement. We note the form on which Claimant wrote his statement contains the following legend at the top:

Any employee shall be offered the opportunity to contact an accredited union representative before making a written statement. A copy of the written statement, if signed by the employee, will be provided to both the employee and the identified union representative.


It is our conclusion that this language is sufficient to meet the Agreement's requirement to notify the employee of his rights. It is important to note that this right to representation does not extend to oral statements made by the employee. *Weingarten* rights are not applicable in this industry.

The charge against Claimant having been proven, we turn to reviewing the quantum of discipline imposed. The seriousness of this offense cannot be overstated. But for the diligence of the train crew, the consequences of Claimant's negligence could have been catastrophic. We find nothing in the record before us that would warrant any modification of the discipline.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


John Ingoldsby
Carrier Member

Dated: March 18, 2024
Arlington Heights, Illinois