

PUBLIC LAW BOARD NO. 7163

**CASE NO. 573
AWARD NO. 573**

Brotherhood of Maintenance of Way Employes Division)	
of the International Brotherhood of Teamsters)	
)	
and)	Arbitration Decision
)	and Award
CSX Transportation, Inc.)	
)	
Carrier File: 20-20383)	
BMWE File: DRA235255620)	

I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. C. Jones, by letter dated November 16, 2020, in connection with allegations that he violated CSX Transportation Rules 700.1, 700.3, 706.1(3), 706.2(b)(c), 706.6 and 104.3(d)(e), was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA235255620/20-20383 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 healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the discipline.’ (Employees' Exhibit ‘A-2’).”

II. FACTS

The Claimant has worked with CSX since 2005. He is familiar with the rules regarding track protection, including when to use portable track protection devices, such as portable derails applied.

On September 2, 2020, at approximately 1500 hours, at or near Howells Yard, Atlanta, GA, the Claimant failed to have proper track protection established while a contractor was unloading a piece of on-track equipment from a tow truck onto the House Track Yard Lead.

The Yardmaster on the site was notified of the Claimant's failure to provide track protection from the FRA on site at the time who saw and inspected the incident. Earlier that day the Yardmaster had given a job briefing related to on-track protection for controlled and non-controlled tracks. The Claimant had been performing the same job task for the week prior to the violation and knew how to put down a derail, and also line and lock a track. Tr. pg. 44. The Claimant did not ask him for clarification regarding track protection at any time.

The Claimant was qualified to do the work and had scored 94% on rules tests, which included track protection procedures and how to use portable track protection devices.

On September 10, 2020, the Carrier sent the following notice to the Claimant:

This will serve as your notification to attend a formal investigation at 0900 hours (CSX Time), on October 1, 2020, in the Atlanta Division/Redi Center Conf. Room, 1590 Marietta Blvd. NW, Atlanta, GA, with you as principal. The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with information received that on September 2, 2020, at approximately 1500 hours, while working at or near Howells Yard, Atlanta, GA, you failed to have proper track protection established while a contractor was unloading a piece of track equipment from a tow truck onto the House Track Yard Lead, and all circumstances relating thereto. You may be represented in accordance with the provisions of your working agreement, and you may arrange to have witnesses present who have knowledge of the matter under investigation; however, it will be your responsibility to arrange for their participation.

This will also serve to confirm that you have been removed from service pending the outcome of the formal investigation.

At an investigative hearing, postponed until October 27, 2020, the Claimant acknowledged that while he was unloading equipment onto the track, he did not set off the track from other possible movements by locking out a switch or applying a derail. The FRA was on site and talked to the Claimant, telling him that he did not have a derail down and to do so. The Claimant went ahead and put down the derail and locked a switch, but only after being notified to do so by the FRA.

As a result of not having protection on the track, a risk of a serious accident was created. A train could have struck equipment or a person because the tracks were accessible. The failure to have track protection under these circumstances violated rules 706.2, 706.6, 700.1, 700.3, and 104.3. On November 16, 2020, the Claimant was discharged pursuant to the incident and supported by prior discipline.

III. POSITIONS OF THE PARTIES

Carrier's Position

The Organization argues that Mr. Jones was performing his task of providing track protection with proper track protection with the best of his knowledge. He was in an unfamiliar area of the yard yet followed all the steps to ensure proper track protection was in place. He conducted job briefings with the Yard Master (CSX personnel responsible for all train movement in the yard) and conducted a job briefing with a CSX Mechanics and Truck Driver prior to occupying the track.

The Carrier argues that the discipline was appropriate because the violation was a critical safety rule violation. a dismissible offense.

Organization's Position

The Organization argues that the Carrier was equally at fault because the Claimant was not qualified to perform the task, or, in the alternative, not properly trained to perform the work. The Organization also avers that the Claimant was not given proper tools, locks, or derail equipment and was not told that he needed them, despite a job briefing. It states that the Claimant had a reasonable belief that there was proper track protection once he got permission from the yard master to shut down the relevant track during the job. The Organization also notes that the Claimant is a 15 year employee and that discharge was too severe a penalty even if the violation occurred.

IV. DECISION

The Carrier has proved by a preponderance of the evidence that the Claimant violated the rules, as stated in his letter of dismissal, that left the track unprotected. The mitigating factors raised by the Organization are insufficient to fully overcome the violation, since he never raised those with his supervisors before starting this work. However, he is a long-term employee with a sparse disciplinary record. This must be factored into the determination of an appropriate discipline.

The Claimant shall be returned to service with full back pay and benefits, with the caveat that any further misconduct shall result in discharge.

V. AWARD

1. The claim is SUSTAINED, in part.
2. The Claimant's discharge shall be reduced to a one-month suspension and he shall be reinstated.
3. The Claimant shall receive back pay and benefits, in accord with the practice on this property.
4. There shall be no change in his seniority status.
5. This is a "last chance" award. Any further discipline for misconduct shall result in discharge.
6. The Carrier is ordered to make the Award effective on or before 45 days following the date the Award is transmitted to the parties.



Casey Summers
Organization Member



John Ingoldsby
Carrier Member



Sheila Mayberry, Chair and Neutral Member
December 13, 2024