

PUBLIC LAW BOARD NO. 7163

CASE NO. 601
AWARD NO. 601

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: J. Menefee

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Menefee, by letter dated January 28, 2022, in connection with allegations that he violated CSX Transportation Rules 712.4.1, 712.17, 712.38.5, 712.32, 712.39, 104.2 and 712.29 was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA836555522/22-69630 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, but not limited to, retirement service accrual and pension payments, healthcare, credit rating, investment, banking, mortgage/rent or other financial loss suffered because of the improper 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 meaning of the Railway Labor Act, as amended, this

Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and the parties were given due notice of the hearing held.

Claimant, J.B. Menefee, established and maintained seniority in the Carrier's Maintenance of Way Department. At the time of the events giving rise to this claim, Claimant was a machine operator; he had operated tampers for about eight years.

On December 13, 2021, at approximately 1045, Claimant came out of the siding at BA 18.3 operating tamper MT 9530. Claimant admits that he did not complete the required distance to stop test. However, he briefly applied the brakes and they functioned properly.

Claimant continued to operate MT 9530 eastbound enroute to his work location at Mile Post 10.9, where he was going to meet regulator operator D. Hines. Claimant passed a moving train and Randolph Road crossing at 23 miles per hour. He continued eastbound through the Garrett Park crossing at BA 12.4 going 20 miles per hour. Claimant was going through the Garrett Park crossing when he copied the regulator operator's notification that the regulator was stopped approximately one mile away.

Claimant admitted that he did not attempt to slow down his tamper until reaching a bridge 600 feet from the stopped ballast regulator. (Claimant estimated the bridge to be 300 feet away from the stopped regulator; measurements showed it was about 600 feet away.) At 1107 Claimant collided with the stopped regulator; the tamper was going 21.9 miles per hour at time of impact. Following the Carrier's investigation, Claimant was dismissed from service for violating CSX Transportation Rules 712.4.1, 712.17, 712.38.5, 712.32, 712.39, 712.29 and 104.2.

The Organization asserts five procedural challenges. First, it argues that the Carrier improperly removed Claimant from service. Countless Boards have determined that the Discipline Rule of the parties' Agreement specifically permits the Carrier to hold an employee out of service

pending the hearing “when a major offense has been committed.” See Public Law Board 7163 Award No. 325 (Simon, 2019). It is our conclusion that withholding Claimant from service in these circumstances was warranted.

The Organization also asserts that the Carrier unjustly removed Claimant from service without pay pending the outcome of the hearing. The Organization pointed to the payroll code applied to Claimant’s record, TSUS, which indicates a temporary suspension. However, the payroll code alone is not determinative of discipline. The record shows that Claimant’s dismissal followed a fair hearing. Accordingly, the Carrier did not violate Rule 25.

Next, the Organization asserts that the Carrier violated Rule 25, Section 1(d) when it did not state the exact offense with which Claimant was charged. However, the December 17, 2021, letter notifying Claimant of the hearing and withholding him from service, identified the December 13, 2021, event and specified the alleged inappropriate conduct. Although the rules were not cited by number, the letter provided sufficient notice to prepare a defense. See Public Law Board 7163, Award No. 365 (Simon, 2019).

The Organization also asserts that a Carrier witness provided testimony via written statement, depriving Claimant of his right to cross examine witnesses. The record shows the Carrier introduced into evidence a written statement by the regulator operator who stated that he stopped the ballast regulator at BA 11.2, notified Claimant, who copied, and then got out of his machine, where he witnessed MT 9530 not slowing down as it approached the stopped regulator. Given that the witness statement corroborated Claimant’s admissions that the regulator operator notified Claimant of the stopped ballast regulator and that the tamper did not stop, Claimant was not deprived of a fair and impartial hearing.

Fifth, the Organization asserts that Claimant was deprived of a fair and impartial hearing when a Carrier official other than the hearing officer rendered the decision in this case. Specifically, the Organization objected to anyone other than the hearing officer making a final determination of discipline when the hearing officer was the only person present at the hearing who could make a fair and impartial decision on candidness and validity of testimony. This case focused on tamper MT 9530's brakes. Evidence included the inspection log, uploaded records from the tamper, GPS information, and pictures showing the speed and location of the tamper. Claimant also made several admissions about the events of that morning. Credibility was not based solely on conflicting testimony about disputed facts. Given the nature of the evidence in this case, Claimant was not deprived of a fair and impartial hearing.

Turning to the merits, the Organization asserts that the Carrier failed to meet its burden of proof. However, Claimant admitted most of the facts leading to the dismissal. He admitted that he did not perform the distance to stop test, did not slow the tamper to 10 miles per hour when passing a train at Randolph Road crossing, did not slow the tamper to 10 miles per hour at Garrett Park pedestrian crossing, which was obstructed by vegetation, did not slow the tamper when the regulator operator notified Claimant that the regulator was stopped approximately a mile away, and did not attempt to slow the tamper until the bridge, approximately 600 feet from the stopped regulator.

Claimant disputed that he was responsible for the collision, however. Claimant testified that when he was near the bridge, he tried to stop the tamper by pumping the brake switch but the tamper did not slow down until it was approximately 40 feet away from the stopped regulator. Claimant asserts that they probably malfunctioned.

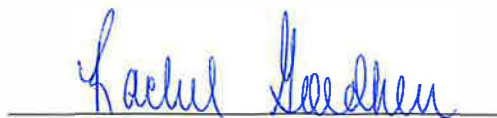
The Carrier relied on the uploaded records from the tamper, which showed MT 9530 did not slow down before impact. In fact, the records showed that the tamper accelerated from 11:06:37 a.m. until 11:07:21 a.m., when collision occurred, contrary to Claimant's assertion that the tamper slowed down in last 40 feet. The uploads also showed the brake pressure switch, which is triggered by application of the switch brake and/or parking brake, had not been engaged since 10:46:13-10:46:28 a.m., when Claimant briefly applied the brakes after coming out of the siding at BA 18.3. The Carrier's witnesses testified that there was nothing in the records to show a malfunction. Further, the post-incident inspection showed the brakes were working, as they had been when Claimant left the siding twenty minutes before the collision.

The Organization also challenged the Carrier's testimony about its attempt to recreate Claimant's recounting of the December 13 accident. The Carrier performed those braking tests on a different tamper than the one involved in the December 13 accident. Accordingly, those results are not dispositive of what happened with MT 9530 on December 13, 2021.

Even excluding the braking tests performed on another tamper, the Carrier provided substantial evidence that Claimant violated the rules as charged.

AWARD:

Claim is denied.



Rachel Goedken
Neutral Referee
Dated: Feb 11, 2025

A handwritten signature in black ink, appearing to read "Casey Summers", written over a horizontal line.

Casey Summers
Employee Member

A handwritten signature in black ink, appearing to read "John Ingoldsby", written over a horizontal line.

John Ingoldsby
Carrier Member