

**PUBLIC LAW BOARD NO. 7163
CASE NO. 615
AWARD NO. 615**

**Brotherhood of Maintenance of Way Employes Division) of
the International Brotherhood of Teamsters)**

and) **Arbitration Decision**
CSX Transportation, Inc.) **and Award**
Carrier File: 22-36916)
BMWE File: DRA 307922)

I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. King, by letter dated November 2, 2022, in connection with allegations that he violated CSX Operating Rules 712.17, 712.16(c), 104.3(e) and 104.2(a) was on the basis of unproven charges, arbitrary, capricious, unnecessary and excessive (System File DRA 307922/22-36916 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, 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, J. King, worked as a vehicle operator for fifteen years with the Carrier at the time of the dispute. There is no prior discipline referred to in the record.

On September 15, 2022, at approximately 0230 hours, the Claimant reported to his supervisor that as he was moving on the track at or near BE 46.5, he had collided with a regulator that was slowing down in front of him, while performing service on assignment 5XT5. The incident injured the employee on the regulator and damaged the equipment. The supervisor directed him to pull up the machine to the crossing at BE 46.5, get off the machine, and wait for him to arrive. The supervisor arrived about 03:00 and, after assessing the situation, the supervisor drove the injured employee to the hospital for treatment around 0300. The Claimant waited at the site for him to return.

After returning to the crossing around 04:45, the supervisor conducted an initial investigation. The Claimant reported that the surfacing team on the regulator was coming to a stop while he was moving behind them on the track. However, he did not hear anyone on the radio telling him that they were stopping or the collision avoidance system (“CASU”) alarm, and he could not recall the speed he was going. He told his supervisor that the CASU was working when he conducted his initial inspection upon the start of his assignment on September 14th at 23:30.

The download from the CASU was inspected on September 15th. It indicated that from August 17th to September 13th, there was no power to the CASU and therefore no information was transmitted to it. The record indicated that between August 29th and September 12th, the machine was idle due to an engine replacement and compressor repair. Window shades were put in on two different occasions during this timeframe.

The download also indicated that on September 13th, between 01:00 and 07:00, there was power to the CASU, but that it then lost power again. On September 15th, at 3:20, the CASU was powered on again.

Each operator is required to check the CASU at the beginning of their assignment. The Claimant stated that on September 14th, upon starting his assignment, he inspected the CASU, saw it light up, and marked it as “passed”. However, during the supervisor’s investigation, the download indicated that the CASU did not have power at the time of the collision. It also indicated that it was on starting at about 03:20 that night. At the hearing, he stated that he did not ask the Claimant about this:

Q-Childs: Did you happen to ask Mr. King about the inspection? Like, hey, why does it show the box passed but it’s not recording, it’s not functioning, it doesn’t have power? A-
Johnson: I didn’t have that conversation.

The supervisor testified that he did not know why the CASU was not on during the collision or why it started around 03:20 that night. He stated that he assumed that the Claimant either did not inspect the CASU or tampered with it by plugging it in at 03:20 while he was taking the injured employee to the hospital, and before he returned to the scene.

The Claimant testified that he was probably going between 10 to 15 miles per hour at the time he realized he was too close to the regulator ahead of him that night. He acknowledged that he did not see that it was slowing down before he tried braking and then engaging the emergency brake. He also noted that he had been looking down, checking other gauges out of concern about the brake compressor issue and the engine, since they had just been repaired. He did not hear the CASU alarm, and did not hear anyone on the radio indicating that the machine ahead was slowing down before hitting the machine. He also stated:

Upon coming into collision with the other regulator, I got out, climbed down, went over to check on him. He said, I’ve got to call Ryan (supervisor). I said, call him. He had a cut on his arm. He told me Ryan said to get, you know, to pull back up to the crossing. I pulled back up to the crossing. On getting there, pulled the parking brake, went over to help him get down the ladder, get his things together and get him to the crossing. And I was pretty much out of the machine at that, you know, not back in the machine at that point.

The record indicates that the supervisor arrived on or about 03:00, took the injured employee to the hospital, and arrived back on or about 04:45. The Claimant remained at the crossing waiting for the supervisor to return and during the supervisor's investigation. He never returned to his machine. He stated that he never tampered with the CASU.

III. POSITIONS OF THE PARTIES

Carrier's Position

The Carrier contends that there was just cause to discipline and discharge the Claimant. It asserts that he violated the regulations governing the operation of on-track equipment and vehicles by:

1. Not completing the required inspections, job briefings and other requirements;
2. Being either dishonest or negligent by disabling the CASU alarm or failing to perform the CASU inspection and making false entries on the inspection report;
3. Failing to operate at a safe speed such that he could stop within the required stopping distance.

The Carrier argues that Claimant's conduct resulted in the violation of CSX Operating Rules 104.2(a) and 712.17, 712.16(c). It further claims that the Claimant admitted to the violations yet failed to accept responsibility or even engaged in improper conduct. The Carrier states that it can no longer be trusted to perform his duties safely and without incident, and that discharge was warranted.

Organization's Position

The organization argues that the Carrier did not meet its burden to establish that there was just cause to discipline and discharge the Claimant. It states that with respect to the Carrier's contention that the Claimant operated at an unsafe speed, the Carrier did not provide evidence that the Claimant operated the machine at an unsafe speed. The Claimant testified that he was

traveling between ten (10) and fifteen (15) miles per hour (“mph”), which was well within the thirty (30) mph limit set by Rule 712.17.

The Organization also asserts that while the Claimant acknowledged that he collided with the machine, the collision was clearly an unintended accident, not deliberate misconduct. The Claimant immediately reported the incident, assisted the injured employee, and expressed remorse for what had happened.

The Organization further contends that the Carrier failed to prove that the Claimant was either dishonest regarding its allegation that he tampered with the CASU, relying instead on speculation and conjecture that he either disabled it or negligently failed to perform the required CASU inspection. The Organization asserts that its reliance on a presumption of dishonesty cannot outweigh the unrebutted facts that the Claimant checked the unit upon beginning his assignment, and was not on the machine, having dismounted it and waited for the supervisor to return from the hospital. It also notes that the supervisor never considered the possibility that the CASU may have become dislodged or turned off when others who were in the machine or had access to it during repair, and that he did not ask others who operated the machine after the machine collision about the timing documented in the transcripts. The Organization argued while the Claimant may have overlooked whether the CASU power light was ignited among dozens of other checks and inspections, this was insufficient proof that the Claimant was dishonest or that he falsified his inspection report.

IV. DECISION

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 the 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.

The Board finds that the Claimant violated Rules 104.3 and 712.17 when he collided with the regulator on September 15, 2022. He was negligent by failing to keep his attention on the track and the distance between him and the regulator in front of him, which led to the collision.

The Board, however, finds insufficient evidence that the Claimant was dishonest or surreptitious in turning on the CASU after the collision. The unrebutted evidence is that the Claimant inspected the unit and indicated that it was working upon beginning his assignment. There is no evidence that he dislodged it or unplugged it. There is no evidence that the Claimant had been dishonest in the past and no evidence that he had a motive to keep the unit unplugged. Given that there was major work being done on the unit prior to September 13th, it is more likely that the unit became loose or dislodged during that period of time.

Furthermore, the Claimant's remorse about what had happened was evident on the record. He stated that he was deeply concerned that his coworker and friend was injured and that the fact that it was his fault caused him great distress and lack of sleep. The Board finds that he was remorseful for what had occurred.

The Claimant is a 15-year employee and the record does not disclose other prior misconduct for which the Claimant has been disciplined. Based upon these mitigating circumstances, the Board concludes that a reduction in penalty is warranted in this case.

V. AWARD

1. The claim is granted, in part.
2. The penalty shall be reduced to a 45-day suspension.
3. The Claimant shall be reinstated and made whole, including back pay, benefits, seniority, and minus interim earnings, subject to the practice on the property.
4. 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
November 3, 2025