

**PUBLIC LAW BOARD NO. 7529
CASE NO. 103
AWARD NO. 103**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION – IBT RAIL
CONFERENCE
(Organization File: 205-191287)**

vs.

**CSX TRANSPORTATION, INC.
(Carrier File: 2015-191287)**

)
) **PARTIES TO THE**
) **DISPUTE**
)
)
)
)

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. *The Carrier’s discipline of Claimant L. Rogers, in the form of a ninety (90) day suspension , one (1) year restriction on holding track authority and mandatory training, for the alleged violation of CSXT Operating Rules 401.9, 401.13, 401.14, 505.12, 707.2 and 707.9, as well as CSX Safe Way Rule ES 24 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D70811515/2015-191287 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant L. Rogers shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 15, 2012, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication. After a thorough review of the record, and a hearing on this matter held on August 25, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The Claimant had over 11 years of seniority at the time of the incident. On May 5, 2015, the Claimant was performing track inspections. He threw a switch and failed to return it to its previous position. As a result a train went into emergency because the switch was lined against their movement. The Claimant testified at the hearing and admitted that he failed to notify the dispatcher as required, that he handled a switch without permission. After a review of the evidence and testimony presented during the hearing, by letter dated July 14, 2015, Claimant was assessed a time served suspension for violating CSXT Operating Rules 401.9, 401.13, 401.14, 505.12, 707.2, 707.9, and CSX Safe Way Rule ES 24.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization contends that the Notice of Investigation should have included a specific rule the Claimant was alleged to have violated. They also stated that he was not granted appropriate postponements and was not given appropriate discovery of documents prior to the hearing. They say that the Carrier failed to meet its burden of proof and that the discipline assessed was excessive.

POSITION OF THE CARRIER:

The Carrier says that the Notice of Investigation was sufficient. With respect to the requested discovery, they say this is not required under the CBA nor under the Railway Labor Act. With respect to postponements, they say that the Claimant was offered recesses, which were sufficient. Finally, they say they did meet their burden of proof and that the 90 days of discipline assessed was appropriate, given that the Claimant had previous discipline on his record.

RESULT:

With respect to the Notice of Investigation, this Board finds that it was sufficient. The Claimant was given enough information to know the case to be met. That is all that is required in such cases, absent a specific CBA provision to the contrary. The parties did not point the Board to any such CBA provision.

With respect to the issue of discovery, this is also not required in railway cases unless there is a specific provision in a CBA. This is tied to the issue of recesses. If the Carrier fails to give information in advance of the on-property hearing, they run the risk of having to postpone the investigation, or at least grant reasonable recesses for the Organization and the Claimant to study any documents. In this case, the Board has reviewed the documents in question. They are not extensive. Nor are they of a highly technical nature which might justify a postponement for further study. The Claimant was offered recesses. The Board finds that this was reasonable in these circumstances. Thus, this Board dismisses the preliminary procedural objections raised by the Organization.

Turning to the merits of the case, the Board finds that there is sufficient evidence for the Carrier to have met its burden of proof.

Finally, we turn to the issue of the quantum of discipline. This was an 11 year employee with a 5 day suspension earlier the same year. That infraction was due to hitting a 2 foot high curb when turning a corner with a company vehicle.

This Board finds that, given the circumstances, and the relatively clear record of this employee, it is appropriate to reduce the discipline assessed to 30 days. His pay, benefits and record shall be adjusted accordingly.

The claim is partially sustained.



Roger K. MacDougall
Chair and Neutral Member

Dated: *March 8,* At: Chicago, IL
2017