

**PUBLIC LAW BOARD NO. 7529
CASE NO. 107
AWARD NO. 107**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	
(Organization File: D13909915))	PARTIES TO THE
)	DISPUTE
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier File: 2015-194264)		

STATEMENT OF CLAIM:

“It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way 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 September 26, 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 Carrier hired contract Maintenance of Way (“MOW”) Foreman W.T. Williams (“Claimant”) on March 10, 2008. The Carrier says that on July 21, 2015, Kyle Chafin, Roadmaster, audited track inspection records/forms, and discovered several discrepancies in which the Claimant failed to enter track inspection reports and had no evidence of track time on days he was scheduled to work. Upon further review, Roadmaster Chafin discovered that the Claimant failed to perform hot weather inspections, as evidenced by his failure to obtain/record authority to occupy the track (“track time”), on numerous occasions from April through July, 2015. At the investigative hearing on August 20, 2015, testimony revealed that Claimant failed to report track inspections on the same day he performed them, as required by FRA rules, on three dates in April 2015, six dates in May 2015, two dates in June 2015, and two dates in July 2015. Testimony further revealed a pattern of failing to document track inspections on Sundays, which, says the Carrier, suggested that Claimant did not attend work on these Sundays. After a

review of the evidence and testimony, the Carrier determined the Claimant violated CSX Operating Rules 100.1, 104.2, 705.1, 705.2, FRA Rules CFR 213.241, and MWI 2006-01. By letter dated September 9, 2015, the Claimant was dismissed from service.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization contends that the Carrier failed to comply with Rule 25 of the CBA by not having specific Rule numbers in the Notice of Investigation. They also say that the Carrier was out of time on the charges since the events were alleged to have occurred from April through July, yet the Notice of Investigation did not issue until August 5, 2015. This must be done, they say, within 20 days under the terms of the CBA.

With respect to the charge of a violation of Rule 100.1, 104.2, 705.1 and 705.2, they point out that these Rules were not entered into evidence, and thus this allegation is invalid.

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. They say, with respect to the time period, that the Notice was issued within 20 days of discovery of the issue.

With respect to the infractions, they pointed this tribunal to the admission in the record. Thus, they say, their burden of proof has been met.

With respect to the quantum of discipline, they say that dismissal is appropriate given the breach of trust of the Claimant.

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.

Turning to the timeliness of the Notice, the Board accepts that, while the actions of the Claimant occurred in April through July, they were not discovered by the Carrier until late July. The Notice was issued in early August. This is in compliance with the 20 day requirement under the CBA.

With respect to the lack of Rules being introduced into evidence in the hearing, this is more problematic. In order to find a violation justifying discipline, there must be a Rule which has been violated. A number of Rules were not introduced into evidence in the hearing. As a result,

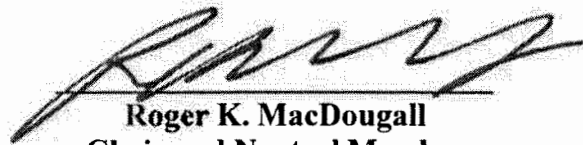
this Board has no option but to dismiss the portion of the case dealing with alleged violations of said Rules. However, the dismissal letter is broader than the specifically missed Rules. As a result, the Board does move to the merits of this case.

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, based on the admissions of the Claimant and the evidence in the transcript.

The Board finds no reason to interfere with the quantum of discipline assessed in these circumstances.

AWARD:

The claim is denied.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL