

**PUBLIC LAW BOARD NO. 7529
CASE NO. 109
AWARD NO. 109**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION – IBT RAIL CONFERENCE (Organization File: D13910115))	
)	
)	
vs.)	
)	
)	
CSX TRANSPORTATION, INC. (Carrier File: 2015-194273))	PARTIES TO THE DISPUTE

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 Foreman J. Harbin (“Claimant”) on January 8, 2007. Roadmaster Bruce Skinner testified the Atlanta Division Engineering department conducted a comprehensive review of track inspections on July 27, 2015 and identified discrepancies with the Claimant’s heat inspection reports. In particular, Mr. Skinner testified the review indicated the Claimant didn’t conduct certain heat inspections he claimed pay for in the months of June 2015 and July 2015. Mr. Skinner submitted copies of the heat inspection reports and testified Claimant claimed time/pay for heat inspections completed on June 21, June 28, July 12, July 19, and July 26. But, no FRA inspection reports existed for the dates listed nor did any record exist of the Claimant requesting track protection in a form of an EC-1. The Claimant provided a statement to Mr. Skinner stating he, in fact, worked on the Sundays listed above. However, Mr. Skinner testified

only the Claimant could've requested EC-1 protection on the dates listed to conduct FRA required heat tests and track inspectors must have EC-1 protection to do the work Claimant was paid to complete. Consistent with Mr. Skinner, Assistant Division Engineer Jeremiah Davis testified the Claimant was required by FRA regulations to conduct heat inspection and none were completed on the Sundays listed and Supervisor of Train Operations Rob Golden testified the Claimant didn't request EC-1 protection on the dates he was required to complete the heat inspections, but did not. Finally, the Claimant admitted at the investigative hearing he didn't comply with the applicable rules and regulations for conducting heat inspections and was negligent in his duties by failing to conduct the heat inspections on June 21, June 28, July 12, July 19, and July 26.

After a review of the evidence and testimony presented during the hearing, the Carrier determined the Claimant violated FRA 213.241, FRA 213.118, and MWI 2006-01. By letter dated September 11, 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 in June and 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. Further, they say, the Carrier had knowledge of the issue as early as June 27, 2015 when the Roadmaster confronted the Claimant. They say this puts the August 5 Notice well outside the 20 day time limit in the CBA.

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 discussion with the Roadmaster, they say he didn't really know what was going on, he was just asking questions. It was only after the audit, they say, that the extent of the issue was discovered.

With respect to the infractions, they pointed this tribunal to the admissions 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.

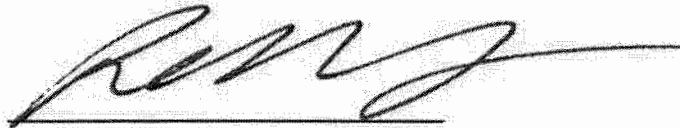
Turning to the timeliness of the Notice, the Board accepts that, while the actions of the Claimant occurred in June through July, at least some of them were not discovered by the Carrier until late July. Even if infractions prior to the June 27th discussion are not allowed into evidence, there are at least 4 others following this discussion that did not come to the notice of the Carrier until the later audit. The Notice was issued in early August. This is in compliance with the 20 day requirement under the CBA.

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, for a finding of guilt on all infractions after June 27th.

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