

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 11, (Case No. 11)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE
(Organization File: D21910912)**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2012-128253)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Paszta, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged O. C. Delaney with violation of Operating Rules - General Rule A, On-Track Worker Rules and Qualifications -- Rules 720 and 727, Safeway Rules ES-15 and MWI-M-060 and was substantial evidence adduced at the Investigation on July 10, 2012, to prove the charges; and was the discipline assessed in the form of a 60 actual calendar day suspension warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute.

This case involves the allegation that the Claimant negligently allowed the T-Rex Crane he was operating June 5, 2012, on a steep grade, to "free wheel" and collide with a Scraper that was located ahead of his machine on the tracks.

The Board has thoroughly reviewed the record and has determined that it is not necessary in this instance to address any alleged procedural errors involving the handling of this case as its resolution will be made on the merits.

Review of the transcript reveals that the Carrier argued the machine used by the Claimant at the time of the incident was given a clean bill of health and there was only one adjustment made to the hi-rail cylinder as a precautionary measure; however, that was not done until after the re-enactment, thus according to it, the re-enactment was done under the same conditions as experienced by the Claimant. The Carrier is partially correct that two days following the incident one inch pressure was added to the left hi-rail cylinder of the crane (See Transcript pages 22, 40 and 43). However, that statement overlooked the fact that Mechanic, C. Duncan

testified on page 47 of the transcript that he made repairs on the day of the accident to both the scraper and the crane. Mr. Duncan was questioned as follows:

"Farmer: Alright, did you make any repairs to the crane?"

Duncan: The crane I had to readjust the rear hi-rail cylinder on it again.

Farmer: Were they out of adjustment?"

Duncan: When we had previously adjusted them and it worked fine at the grade we were at, we didn't realize or I didn't realize that they needed more adjusting, because we didn't have the scenario set up to check it for that type of grade, I guess; I did have to readjust.

Farmer: Okay, but was it because it was out of adjustment?"

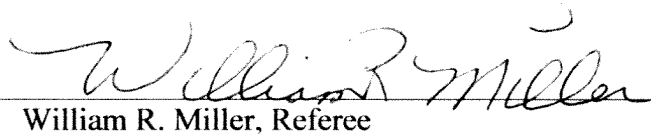
**Duncan: It obviously had to be out of adjustment because it, it wouldn't hold on that grade. I was told to, readjust it by my supervisor."
*(Underlining Board's emphasis)***

It is clear that contrary to the Carrier's argument the Claimant's crane was readjusted prior to the re-enactment and was again readjusted after the re-enactment and that coupled with the fact that the testing was done on a somewhat lesser grade than experienced by the Claimant reveals that the re-enactment was not done under the same conditions faced by the Claimant on June 5, 2012. The record further indicates that the Claimant performed his duties in a cautious manner making a concerted effort to prevent the accident (See Transcript pages 15, 37, 45, 50, 62 - 67). Unfortunately because of the mechanical malfunction of the crane the incident occurred due to circumstances beyond the Claimant's control making the accident unavoidable. It is determined that substantial evidence was lacking and the Carrier did not meet its burden of proof.

The Board finds and holds that the 60 day actual calendar suspension was not appropriate and should be removed from the Claimant's personnel record. The claim is sustained and the Claimant will be made whole in accordance with Rule 25, Section 4 of the Agreement.

AWARD

Appeal sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.

A handwritten signature in cursive script, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Referee

Dated: January 8, 2013