

**PUBLIC LAW BOARD NO. 7529
CASE NO. 113
AWARD NO. 113**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization File: D70815315))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier File: 2015-196969))	

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.

The Carrier hired Track Inspector CK Watts (“Claimant”) on April 23, 2007. Roadmaster Johnathan Turner testified that on June 9, 2015, at approximately 2120, the Claimant called and advised he was run off the road by another vehicle and was in a ditch. The Claimant further advised he was ok and there was minimal damage.

Based on the facts presented by Claimant, Mr. Turner did not investigate the incident until the following morning. The next day, Mr. Turner and Assistant Division Engineer Randy Parrish went to the scene of the incident and discovered the damage was much more extensive than initially described by the Claimant. Particularly, the Claimant ran several hundred feet off the road, through a birdbath and a brick wall. Moreover, he was cited by police for reckless driving. Photos of the incident and the police report were introduced at the investigative hearing.

Claimant testified he had traveled to a friend’s home before heading back to the office to input a

report. On his way, a car ran him off the road and he was given a ticket because he was the only car there. The Claimant testified that he could not remember what he inspected the day of the incident and did not input any inspection reports. The Claimant also testified he was injured as a result of the incident, although he was evaluated by EMS with no record of injury, did not complain to anyone of an injury, and both supervisors testified he appeared normal and fully functioning the following day.

After a review of the evidence and testimony presented during the hearing, the Carrier determined the Claimant violated CSX Transportation Operating Rules, 100.1, 104.3, and 104.4. By letter dated October 12, 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 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 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 the only appropriate outcome, given that the Claimant misled the Carrier intentionally.

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.

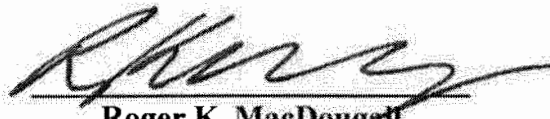
Turning to the merits of the case, the Board finds that there is sufficient evidence for the Carrier to have met its burden of proof, based on the transcript.

The Carrier has met its burden of proof. The Claimant was not forthright with the Carrier during his statements and attempted to cover up his culpability. The Board is convinced that he was intentionally attempting to minimize his involvement and to mislead the Carrier.

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