

PUBLIC LAW BOARD NO. 7529

Award No. 114
Carrier File: 2015-196972
System File: D21002915

PARTIES

TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters
(the Organization)

and

CSX Transportation, Inc.
(the Carrier)

Arbitrator: Sherwood Malamud

Claimant: William R. King

Decision: Claim Sustained

Statement of Claim:

“It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way Agreement.”

Findings of the Board:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Carrier assessed discipline, a 5-day actual suspension and 5 days overhead suspension for one year beginning October 24, 2015. The discipline issued on October 13, 2015, after an investigatory hearing that was held on September 23, 2015. The Carrier assessed the

discipline as a result of an incident that occurred at 1800 hours on August 26, 2015 in the vicinity of Pa (P5-Subdivision). The Carrier charged that Claimant, W. R. King, a Track Foreman and 37 year employee with the Carrier, did not follow the instructions of the Roadmaster who reminded Claimant in a message sent at the end of the work day on August 26 to enter the Surfacing Report for the work performed that day. Claimant failed to input a Surfacing Report after the completion of the work on Wednesday, August 26, 2015. The Carrier charged Claimant with failure to follow the instruction of his supervisor in violation of Operating Rule 100.1 which reads as follows:

Employees must know and comply with rules, instructions and procedures that govern their duties. They must also comply with the instructions of supervisors. When there is uncertainty, employees must:

1. Take the safe course, and
2. Contact a supervisor for clarification.

Claimant testified that he was in the process of inputting the track Surfacing Report for the work performed on the track denominated Drill #2 located outside the Goulden Yard office at mile post 646.4. Claimant received a text message from Roadmaster Cox which he understood to mean that the Roadmaster had submitted the Surfacing Report on behalf of Claimant. The Roadmaster acknowledged at the investigatory hearing that it was possible to interpret his message as indicating that the Roadmaster had submitted the report. In fact, the Roadmaster indicated in his message that he had put in the work order for the next day. Based on his misunderstanding of the message, Claimant cancelled the report he was preparing.

On the next day, August 27, the Roadmaster noted that Claimant had not submitted the Surfacing Report, despite the Roadmaster's reminder. As a result of this failure, the Roadmaster initiated the charges that are the subject of this case.

At the outset of the investigatory hearing, the Organization objected to the submission of the charge letter into evidence on the grounds that the charge letter failed to specify the Operating Rule that Claimant is charged with violating. The Board agrees with the Hearing Officer's overruling the objection. The Carrier must set forth sufficient facts to alert Claimant as to the basis for the charge. It need not set out the rules violated (NRAB First Division, Award 26604 (Kohn)). However, setting out the Rule violated adds clarity to the charge.

The evidence presented on the property at the investigatory hearing establishes that Claimant neither intentionally refused to obey the Roadmaster's instruction nor did he ignore the reminder to submit the Surfacing Report. Furthermore, the evidence establishes that Claimant misunderstood the subject of the message.

The Carrier submitted evidence that if Claimant were in doubt as to whether the Roadmaster had submitted the Surfacing Report, he could access the Track Infrastructure Maintenance Reporting System (TIMRS) to ascertain whether a report for work performed on August 26 had been submitted for the particular mile post. Claimant acknowledged that he did not check to see if the report had been submitted.

The Organization asserted that the incident in question is simply a misunderstanding. There was no intent to disregard a supervisor's instructions. Rather, the evidence demonstrates an intent to comply with those instructions. The Board agrees with the Organization's characterization of the evidence. The Board finds no misconduct on the part of Claimant. In the absence of evidence that Claimant ignored or disregarded the Roadmaster's reminder, Claimant was late in submitting the Report. However, submitting a late Report is not the basis of the charge against Claimant.

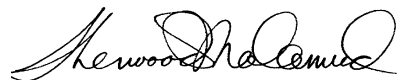
In the approximately 3-week period from the incident to the date of the investigatory hearing, Claimant relinquished his position as a Track Foreman and at the time of the hearing he was working as a Machine Operator. The change in jobs occurred before the disciplinary decision. The Board concludes there is no conduct that is appropriately the subject of discipline, in this case.

Award

The claim is sustained.

The Carrier shall reimburse Claimant for pay and benefits lost as a result of the imposition of the 5-day suspension. Furthermore, the Carrier shall delete reference to the suspension from Claimant's Employee History, and furthermore, the Board sets aside the 5-day overhead suspension.

Date: October 13, 2016

A handwritten signature in black ink, appearing to read "Sherwood Malamud". The signature is fluid and cursive, with the first name "Sherwood" written in a larger, more prominent script than the last name "Malamud".

Sherwood Malamud
Neutral Member