

PUBLIC LAW BOARD NO. 7529

Case No. 116

Carrier File: 2015-198809

**PARTIES
TO THE DISPUTE**

**Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters**

VS.

CSX Transportation, Inc.

Arbitrator: Sherwood Malamud

**Decision: Claim Sustained
Employee: M. Mattox**

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 charges that Claimant:

at approximately 0840 hours, on July 9, 2015, in the vicinity of milepost CP 286, where you [M.K. Mattox] failed to wear your seat belt while operating backhoe TBH 201419L, resulting in damage to the backhoe, and all circumstances relating thereto.

While operating the backhoe, the bucket hit a hard object. Claimant was thrown forward

into the rear view mirror of the backhoe. He sustained a cut on his forehead that required stitches. After the October 20, 2015 hearing, by letter dated November 9, 2015, the Carrier imposed a 7-day suspension for Claimant's alleged failure to wear a seat belt, despite Claimant's assertion throughout that his seat belt was properly secured at the time of the incident.

The Carrier scheduled the investigatory hearing for August 6, 2015 in East Syracuse New York. The Organization appeared at the scheduled time and place. The Organization maintained that it was fully prepared to proceed. It traveled at some expense, including an overnight stay. The Carrier failed to have a hearing officer in place.

Subsequently, the Carrier asserted different reasons for its unilateral postponement of the hearing without the Organization's consent. The hearing officer was on the 3rd floor, when the Organization's representative and Claimant were on the second floor. The recording machine that records hearings was inadvertently transported to another facility to record a hearing held there.

However, prior to the October 20 hearing, but after the original August 6 hearing date, specifically, on September 8 and 9, the Carrier unilaterally arranged to have a safety analysis performed on the Case Backhoe. In its written report read into the record, the consultant hired, SEA, concluded that it was not possible for Claimant to hit his head on the rear view mirror with the seat belt properly engaged. However, both the charging officer and a Carrier mechanic testified it was possible, but improbable, for Claimant, given his height and weight, to have hit his head on the rear view mirror with his seat belt secured.

Procedural Fairness:

The Board concludes that the unilateral postponement of the hearing on its scheduled date deprived Claimant of a fair and impartial hearing in accordance with Rule 25 Section 4(d). For that reason, the Board finds that the seven day suspension should be set aside. The Carrier shall pay Claimant the pay and benefits lost as a result of the imposition of the seven day suspension.

Award:

Claim sustained.



Date: June 22, 2017

Sherwood Malamud
Neutral Member