

PUBLIC LAW BOARD NO. 7529

Case No. 117
Carrier File: 2016-199824
System File: D21009215

**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 Denied
Employee: J. Patterson

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier's dismissal of Claimant J. Patterson for the alleged violation of CSXT Operating Rules 104.2, 104.3 and 105.1 was without just and sufficient cause and in violation of the Agreement (System File D21002915/2016-199824 CSX).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant J. Patterson shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."*

Claimant submits this Claim to this Board by stating:

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 hired Claimant JD Patterson (225064) on July 16, 2007. At all relevant times, Claimant served in a supervisory capacity as a Roadmaster of track in the area of Tampa, Florida. On August 4, 2015, Assistant Division Engineer Nate Durbin was Claimant's supervisor. Both walked a segment of track between Mile Posts 881.7 and 873.7 they observed many defects and conditions. On August 4, 2015, Federal Railroad Administration (FRA) inspectors wrote up 17 conditions that required repair and/or remediation. Between August 5, and August 25, Durbin contacted Claimant to ascertain if the conditions/defects identified by the inspector had been addressed. Claimant entered into the Carrier's maintenance record system, FIRM, that these had all been addressed.

On August 25, 2015, Claimant entered into the FIRM system that the defects had been **repaired**. On September 9, 2015, the FRA inspector re-inspected the track it listed as needing attention. By that time, 8 defects listed as repaired by Claimant, remained in the same condition as noted on the August 4 inspection. On September 9, Claimant hand wrote a statement taking full responsibility for the conditions and defects that were identified upon re-inspection of September 9. A segment of class 4 track continued to have a warp of 2 1/4 inches, when the maximum allowable warp for that class track was 1 1/4 inches. Both freight and Amtrak trains ran over this segment of track.

Several defects attributable to fouled ballast had not been addressed. Two frogs with horizontal and vertical cracks had not been repaired. For A.D. Engineer Durbin, the only proper repair of the frogs was to replace them. In a written statement Claimant prepared on September 9, 2015, he took full responsibility for defects and conditions that remained. By the time of the investigatory hearing on November 5, Claimant maintained that the crews he supervised reported that all the noted conditions had been addressed. He argued that fouled ballast conditions had been remediated, but in the interim had become fouled. Crews welded the two frogs to repair them.

On November 25, 2015, the Carrier concluded that Claimant violated Operating Rules 104.2 and 104.5. The Carrier maintains that Claimant on August 25 Claimant falsified FRA reports, federal documents, and entered false information in the Carrier's FIRM system. It not only removed Claimant from his supervisory position, but dismissed him from serving as a Trackman in the Maintenance of Way Department and from maintaining seniority with the Carrier.

Carrier Operating Rules:

Operating Rule 104.2 states in pertinent part:
Employee behavior must be respectful and courteous. Employees must not be any of the following: a. Dishonest.

Operating Rule 105.1 states in pertinent part:

Protect trains and on-track equipment against any known condition that may interfere with safe operations. Immediately report the following conditions to the proper authority: 2. Defects in track, bridge, signal, or highway-rail crossing warning devices; 5. Any condition that may affect safe and efficient operations.

Positions of the Parties:

The Organization argues:

“In this case, the Claimant maintained that he did not violate Carrier rules and that he did not intentionally falsify documents. Claimant testified that some of the subject defects were mis-categorized as defects and that repairs were in fact done to the areas that were noted as defects. Claimant was a roadmaster (manager) at the time of this incidence and Claimant also testified that in some incidents he relied upon information from his crews that work was performed at some of the locations. The testimony provided at the hearing shows that the Claimant provided a reasonable explanation for each of the defects the Carrier used as a basis to charge the claimant with. Moreover, the Carrier disagreeing with how the Claimant supervised has nothing to do with his Maintenance of Way seniority and whatever he did as a manager should not affect his ability to work in the Maintenance of Way craft.”

There is a lot of grey in the application of these Federal rules.

The Organization argues that Claimant did not intend to mislead. Claimant was under pressure from the Carrier to get the work done. Claimant relied on reports he received from Maintenance of Way gangs.

The Carrier action reflects no progressivity. The Carrier may remove Claimant from his managerial position. It should not impact his ability to work as a Trackman.

The Carrier argues that Claimants’ conduct not only reflects on his ability to remain a managerial employee. He exercised bad judgment in cutting corners. He falsified documents, FRA reports. The falsification charge warrants dismissal.

Conclusions of the Board:

The Organization raised the procedural defense that Claimant was not afforded a fair hearing, because the notice did not set forth the Rules allegedly violated by Claimant. This Board has addressed this defense in PLB 7529 Case 106 Arbitrator MacDougall and Case 114, this Arbitrator. The Carrier charges that on August 25, 2015, Claimant falsified Federal documents and failed to protect CSXT track against known defects. The statement is sufficient to alert Claimant and the Organization to the substance of the charges. The Board finds no merit to the claim that Claimant was deprived of a fair and impartial hearing.

As to the substantive charge of falsification, upon a thorough review of the on site hearing transcript and exhibits, the Board finds that the Carrier presented substantial evidence to support its charge. The Carrier established that the appropriate repair for the two frogs was to replace them. Claimant did not arrange to have the frogs replaced, yet he noted that the frogs had been repaired on Federal documents and the CSXT FIRM system.

The Organization maintains that Claimant did not intend to mislead. However, he entered into the FIRM system that the defects had been repaired. There is no evidence of any kind that supports Claimant's testimony that Maintenance of Way gangs reported that the track deficiencies documented by the FRA had been repaired. The Carrier established through re-inspection on September 9 that the deficiencies Claimant had labeled as repaired had not been repaired. Claimant's failure to inspect the "repairs" resulted in a false report.

There is some conflict in testimony between Claimant and Assistant Division Engineer Durbin as to the appropriate classification of the track defects/conditions identified. In PLB Case 7163 Case No. 76, the Board chaired by Arbitrator Wallin concluded that where there were two reasonable accounts of events, one presented by the Carrier's witnesses and the other by the Organization's, the Board ruled against the party with the burden of proof.

In this case, the Organization's account is supported by Claimant's conflicting statements, his written statement on September 9 in which he took "full responsibility" for the track conditions, and his testimony at the investigatory hearing on November 5. On November 5, he asserted that the conditions were remediated or not properly categorized. The Carrier's account of events is supported by the consistent account of Assistant Division Engineer Durbin. This Board sitting in appellate review of the record discounts Claimant's account in weighing the evidence presented.

The Organization's strongest argument concerns the level of discipline. Claimant had a clean disciplinary record as an eight year employee. Progressive discipline is not present, here. However, the charge is falsification. The Organization does not cite any cases in which dismissal is found to be too severe a penalty, where the Carrier has established, as it has in this case, that Claimant falsified documents.

Award:

Claim denied.



Date: June 22, 2017

Sherwood Malamud
Neutral Member