PUBLIC LAW BOARD NO. 7529

Case No. 119

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File: D70800516

VS.

CSX Transportation, Inc.
Carrier File: 2016-200610

Arbitrator: Sherwood Malamud

FINDINGS

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.

Under date of January 11, 2016, Claimant D. W. Hellmig signed an Attachment A expedited discipline handling form. Through this document, Claimant Hellmig elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired Welder D.W. Hellmig on September 26, 2014. The incident that gave rise to the discipline that is the subject of this appeal occurred at approximately 12:10 A.M. on October 27, 2015. Claimant was operating a standup forklift. He observed a newly installed concentric diffuser for an air conditioner unit suspended from the ceiling. He slowed, but was unable to stop the forklift in time. He hit and damaged the air conditioner unit. It cost $3598.47 to replace the unit.

The Carrier removed Claimant from service. By letter dated November 4, 2015, the Carrier scheduled a formal investigation concerning the October 27, 2015 incident to develop the facts and place responsibility for the damage done. The letter did not specify the operating rules allegedly violated by Claimant. In material part, the letter put claimant on notice that the investigation would address the allegations that:

> . . .on October 27 2015, at approximately 0010 hours, you operated a forklift in the Curtis Bay Pier B & O Warehouse that you were not qualified on, struck an air handling unit resulting in damage and all circumstances related thereto.

A hearing was held on November 16, 2015. The hearing was not completed on that date due to a defective recording machine. The hearing re-convened and was completed on December 15, 2015. At the re-convened hearing, the Organization objected to the questioning of witnesses who had already testified at the first hearing. In fact, the hearing continued forward. Witnesses were not recalled to present the testimony they provided at the first hearing on November 16.

The testimony of both Operating Supervisor C. Warren and Claimant established that Claimant while operating the standing forklift struck and damaged the concentric diffuser unit hanging from the warehouse ceiling. Although it had been installed hours before, Claimant testified that he observed the unit, but he was unable to bring the standing forklift to a complete stop before hitting and severely damaging this air conditioning unit, which required the expenditure of $3598.47 to replace.

By letter dated January 7, 2016, Supt. of Coal Piers, L.A. Jolley determined:

> ". . . the discipline to be assessed is time served beginning October 27, 2015 through January 4, 2016 and you are disqualified as a forklift operator and at the end of one year, your request for re-qualification will be reviewed after one year beginning January 4, 2016."

POSITION OF THE CARRIER

The Carrier argues that it established the facts through the on property testimony of Claimant's immediate supervisor and through both Claimant's written statement on October 27, 2015, the date of the incident, and his testimony at the on property hearing. Claimant saw the unit hanging down from the ceiling, yet, he drove into and damaged the air conditioning unit. The Carrier met its burden of proof. Claimant violated Operating Rules 100.1, 104.3 and CSX Safe Way Rule GS-7

The penalty of time served, a 69-day suspension, is lenient, in as much as this is the second major incident in Claimant's record in a 4-month period. The Carrier could have elected to terminate his employment. The level of discipline comports to the Carrier's IDPAP policy.

POSITION OF THE ORGANIZATION

The Organization argues that the disqualification for one year was sufficient penalty. Claimant was truthful. He called the incident to the attention of supervision. A double penalty of a suspension and disqualification is too severe.

FINDINGS OF THE BOARD

During the Board's deliberations, the issue of the Board's jurisdiction to consider the

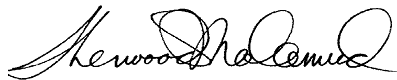
Carrier's disqualification of an employee on a particular piece of equipment was raised. During the on property hearing, the question arose whether Claimant was qualified by the Carrier to operate a standup forklift. In the context of this case, the issue arises as to whether the disqualification and the imposition of a 69-day suspension was too severe.

The Organization objected to the November 4, 2015 notification letter. It failed to specify the rules allegedly violated by Claimant's conduct. This Board determined in Awards 106 (MacDougall) and 114 (Malamud); NRAB Third Division Award No. 35022, BMWE v. BNSF (Kenis) that it was not necessary to specify the Rules allegedly violated. Under Rule 25, the Carrier had to provide sufficient information to alert Claimant of the conduct that is the subject of the investigation. The Carrier did so in the November 4, 2015 letter.

The Board finds it is unnecessary to determine or address the qualification issue. If it is part of the discipline, it does not make the penalty too severe in light of the circumstances of this case. The Carrier met its burden of proof. It established that Claimant was aware of and observed the compressor unit hanging from the ceiling. Claimant did not have sufficient control of the forklift to stop in time to avoid hitting and damaging the unit. The Carrier established that this a second major incident that Claimant incurred in a short period of time. The discipline imposed conforms with its disciplinary policy. The level of discipline is appropriate to the rule violations committed by Claimant.

AWARD

Claim denied.



Sherwood Malamud
Neutral Member

November 3, 2017