

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File D21003116

VS.

CSX Transportation, Inc.
Carrier File: 2016-202219

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 February 24, 2016, Claimant J. Studstill signed an Attachment A expedited discipline handling form. Through this document, Claimant Studstill elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired Claimant on January 22, 2007. Claimant was a Track Inspector on the Fitzgerald Subdivision for 5-years, and he worked as a Track Inspector a total of seven years prior to the time period that is the subject of this discipline.

In December 2015, Claimant inspected track, but he neglected to input the inspections on the dates the inspections were made. On December 24, when he performed his track inspection, he was without his computer due to a recurring power issue. On December 25, 2015, Claimant inputted his inspections that he conducted over several days. He failed to backdate the inspections to the dates he performed the inspections. His record keeping prevented him from doing so.

Roadmaster D. Bell, who assumed this position on the Fitzgerald Subdivision approximately 1.5 to 2 months prior, noted that the amount of track Claimant had inputted that he inspected on December 24 would be impossible to accomplish in one day. On January 7, 2016, Claimant wrote a statement in which he acknowledged his failure to backdate his inspections in ITIS, the Carrier's record keeping system. Roadmaster Bell notified Claimant on January 11, 2016 to report to an investigatory hearing on January 26, 2016.

Division Engineer Spivey concluded that Claimant violated Carrier Operation Rules 100.1 and 104.2a. He disciplined Claimant with a 30-day actual suspension, by letter mis-dated

January 5, 2016. Rule 100.1 directs that employees follow the rules and contact a supervisor for clarification. Rule 104.2a mandates employees must be honest.

POSITION OF THE CARRIER

The Carrier asserts that Claimant received a fair hearing on the property. The Organization's objections concerning the charge letter's failure to specify the rule allegedly violated put Claimant on notice concerning the subject of the charge against him that will be the subject of the hearing.

The Carrier maintains that it met its burden of proof. It established by substantial evidence that Claimant violated Rules 100.1 and 104.2a. Claimant admitted he failed to accurately input in ITIS the precise dates on which he conducted the inspections. His admission establishes that he committed the offense, as charged, PLB 6059 Award 498 (Lynch).

The Carrier argues that the 30-day suspension was assessed in accordance with the Carrier's IDPAP policy. The offense committed by Claimant falls under Part III of the policy. It is a major offense. He falsified FRA inspections that neutrals have recognized as a major offense: PLB 7263 Award 5 (Wallin); PLB 6879 Award 142 (Ross); NRAB, Third Division, Award 33387 (Meyers).

POSITION OF THE ORGANIZATION

The Organization argues that the Carrier failed to provide Claimant with a fair hearing. It did not specify the Carrier's rules allegedly violated by Claimant.

The Carrier failed to meet its burden of proof, PLB 7163 Award 76 and PLB 7529 Awards 32 and 49. If this Board should determine that Claimant received a fair hearing and the Carrier met its burden of proof, the Carrier imposed an arbitrary penalty, which this Board should reduce, PLB 7529 Awards 16 and 35; Special Board of Adjustment #976. Discipline should be progressive rather than punitive, NRAB Second Division Award 6485; Third Division Awards 21760, 22237, 26584 and Fourth Division Award 3634.

The Organization emphasizes that Claimant performed the inspections. His disciplinary record at the time this discipline was imposed was free of any other live discipline. The 30-day suspension is too severe. In other Track Inspection cases decided by this Board, lighter penalties were imposed for more severe conduct, PLB 7529 Awards 95 and 101.

FINDINGS OF THE BOARD

The Organization objected to the January 11, 2016 notification letter. The letter 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, BMW 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 January 11, 2016 letter.

The Carrier met its burden of proof. Claimant admitted that he could not recall, and he did not otherwise keep accurate records of the what and when of the inspections he conducted. The number of inspections and distances entered into ITIS could not have been concluded on one day, December 24, 2015.

The Carrier argues that Claimant falsified records. Falsification is a Part III Major offense under the IDPAP policy. Under the policy, an offense in this category would warrant dismissal.

The Organization cites several Track Inspection cases in which the penalty imposed was limited to disqualification from serving as a Track Inspector. In those cases, the Board merely affirmed the discipline imposed on the property. Here, the Organization asks that the Board reduce the penalty imposed on the property, a 30-day actual suspension.

For its part the Carrier, cites drug cases that presumably support the 30-day suspension imposed on Studstill, PLB 7263 Award 5 (Wallin) and PLB 6879 Award 142 (Ross). The Carrier also cites NRAB Third Division Award 33387 (Meyers) in which honesty is the subject of the discipline.

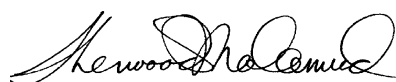
Claimant had a clean disciplinary record, when the suspension was imposed. There is no factual issue concerning Claimant's actual performance of the track inspections. The Board recognizes the importance of accuracy of entries that employees make in the Carrier's ITIS system. The Carrier's treatment of this case as an intentional falsification of records is influenced by the discipline imposed on Claimant for his conduct on January 1, 2016 file #297072, Case 123. The characterization of Claimant's conduct in this case is captured by the narrative that appears in Claimant's Employee History:

Employee failed to input inspections in ITIS on the date that he made them. He inspected the track on 12/24/15 which consisted of FRA traversals and CWR Joint Bar inspections. The employee input the inspections on 12/25/15 and did not back date his inspections in ITIS to reflect what work was performed out in the field on the date it was performed.

This Case 122, standing on its own, describes a serious rather than a major offense under IDPAP. As a first serious offenses, the record supports the imposition of a one work week suspension. The Carrier shall pay Claimant backpay in accordance with Rule 25 for the balance of the 25 days suspension days imposed.

AWARD

Claim sustained and denied in part. The 30-day suspension is reduced to 5-days. The Carrier shall implement the Award in accordance with the Findings.



Sherwood Malamud
Neutral Member
Dated: November 3, 2017