

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File No. D21003216

VS.

CSX Transportation, Inc.
Carrier File: 2016-202221

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 March 4, 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 established and maintained seniority as a Track Inspector on the Fitzgerald Subdivision for 5-years. He established seniority as a Track Inspector for a total of seven of his nine years of employment with the Carrier. His training and qualifications as a Track Inspector were current at the time pertinent to this case.

On December 30, 31, 2015 and January 1, 2016, Claimant inspected track, but he neglected to input the inspections on the dates the inspections were made. The repairs he inputted were performed on January 1 were performed on December 30, Claimant stated in his testimony at the investigatory hearing.

Roadmaster D. Bell, who assumed this position on the Fitzgerald Subdivision approximately 3 months prior, notified Claimant on February 1, 2016 to report to an investigatory hearing on February 17, 2016. Bell informed Claimant that the subject of the meeting would be that on January 1, 2016 “your inspection and payroll records did not match your track authority minutes. . .”

The Carrier established during the investigatory hearing that Claimant had zero minutes of track time, but he asserted that he walked and inspected 40 miles of track in 10 hours on January 1. With zero minutes of track authority, he could not have hi-railed and repaired 5

defects as he listed on his FRA reports he inputted in ITIS.

Claimant testified he inspected rail from a train. However, the repairs he recorded of a frog guardrail, rail gauge and the repair of a cross tie on industry track would require tools and the train to stop for a period of time. The stop would have been without track authority. The conductor statement he obtained covered December 31. It does not suggest how Claimant made repairs, had the train stop for a sufficient period of time to make the repairs. The statement just indicates Claimant hitched a ride on the 31st. Unlike Case 122, the problem is not limited to misdating. The testimony and evidence brings into question whether Claimant performed the inspections as he claimed.

Division Engineer Spivey concluded that Claimant falsified FRA inspection records and his payroll claim for 10 hours of pay for working on a holiday. He concluded dismissal was the appropriate penalty.

THE CARRIER ARGUMENT

Claimant admits that the information he inputted was mis-dated. He did not have track authority to inspect and repair the track, as he claimed. These are FRA reports. He could not have inspected the volume of track, as he claimed with only 22 minutes of track authority (Carrier Exhibit 5). Claimant repaired track on December 30. He would have had to effect the repairs from a train. Claimant did not complete the repairs he claimed he performed.

THE ORGANIZATION ARGUMENT

The Organization challenged the procedural sufficiency of the notification letter, in that it failed to specify the rules Claimant allegedly violated. During the Board's deliberations, the Organization noted that the Carrier failed to comply with the time limits between its First Knowledge and the charges. The charges were not filed within 20 days as required by Rule 25.

The Organization claims the Carrier failed to meet its burden of proof. There are no witnesses to support the Carrier's charge that Claimant did not work on the holiday, January 1. The Carrier's case is built on circumstantial evidence. Roadmaster Bell was new to this territory.

The manner in which he wanted track inspected he noted in the course of the discipline that was the subject of case 122. In both case 122 and in this case, Claimant mis-dated when he performed his track inspections. Claimant was disciplined in quick succession, without warning or correction from Bell. The Roadmaster did not provide Claimant with the opportunity to correct his work performance. Claimant learned the manner in which Bell wanted him to conduct his track inspections at the earliest, at the first investigatory hearing held on January 26, 2016, well after Claimant's inspections on December 30, 31, 2015 and January 1, 2016. The Carrier's discipline of Claimant violates the well accepted principle of progressive discipline.

FINDINGS OF THE BOARD

The Organization objected to the February 1, 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 February 1, 2016 letter.

The Organization claims that the Carrier failed to charge Claimant within the time limits set by Rule 25. The Organization failed to raise this issue on the property. The Board concludes this defense was waived.

The Carrier met its burden of proof. It is not the misdating that results in the discipline of Claimant, in this case. The evidence establishes that Claimant had 22 minutes of track authority on December 30. Otherwise, Claimant had zero minutes of track authority on December 31 and January 1. He simply could not have inspected 40 miles of track and made repairs on a segment of 18 miles of track. He required track authority to effectuate the repairs. He could not have effectuated those repairs from or during a train ride.

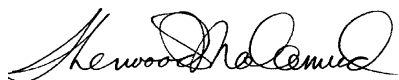
Claimant asserts that he failed to properly date his input to ITIS, when he made the repairs and inspected track. Claimant failed, in his testimony at the investigatory hearing, to overcome the documentary evidence entered into the record by the Carrier. Claimant was a qualified and trained Track Inspector in December/January 2015-16.

The record establishes that Claimant falsified records. The record supports a finding that Claimant intended to enter data that he repaired 5 track defects, when he lacked the track authority to effectuate those repairs. He claimed he inspected 40 miles of track in a 10 hour period. He could not have accomplished the task. The Carrier met its burden of proof.

The Organization points to the lack of progressive discipline. In a falsification case, the offense is sufficiently serious, it warrants dismissal for a first offense.

AWARD

Claim denied.



Sherwood Malamud
Neutral Member
Dated: November 3, 2017