

PARTIES
TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters
System File: D17907416

VS.

CSX Transportation, Inc.
Carrier File: 2016-207674

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 June 9, 2016, Claimant R.J. Lisk, Jr. signed an Attachment A expedited discipline handling form. Through this document, Claimant Lisk elected to forgo the traditional on – property discipline process and instead submit the matter directly to arbitration.

FACTS

The Carrier hired Claimant on September 18, 2000. The incident that gave rise to the Carrier's decision to issue an order of dismissal occurred on April 12, 2016. Claimant, who maintained seniority as a Machine Operator for six months prior to this incident, struck a power switch with the machine he was operating in the vicinity of Waxhaw North Carolina. The switch machine casing and the electronic components therein were damaged necessitating its replacement at a cost of \$10,000. The accident rendered a siding unusable. As a result, delays resulted on the mainline of the Monroe subdivision.

The Carrier directed Claimant to attend an investigatory hearing on April 18, 2016. After one postponement, the hearing was held on May 18, 2016. After reviewing the testimony and exhibits produced at the hearing, by letter dated June 7, 2016, Division Engineer Elliott concluded and issued what he determined was the appropriate level of discipline, dismissal. He determined that Claimant violated Rule 100.1, 104.1, 104.3, 700.3 and Rule 712.17. Rule 100.1 directs an employee to, "Take the safe course." Rule 712.17 directs that an operator of mobile on track equipment should, "When operating on-track equipment operate at a speed that permits stopping within one-half the range of vision." Rule 104.1, "When on duty, employees must: 3. Perform duties in a safe and efficient manner that prevents unnecessary delay to customers." Rule 104.3, "The following behaviors are prohibited while on duty, on CSX property when

occupying facilities provided by CSX: d. Carelessness, incompetence, or willful neglect of duties, ore. Behavior that endangers life or property.”

On April 12, 2016, Claimant operated an on-track machine, a Regulator. It is equipped with wings and a broom that are controlled by the operator. In his statement he provided to Roadmaster II Horne, Claimant described what occurred, as follows:

Around 14:40 I was knocking down tator rows with the wing of regulator and brooming, got to switch and stopped the broom. Then pulled forward left wings down and wing contacted switch machine. There was a cone on the machine.

Claimant did not realize how close he was to the switch machine.

Claimant's disciplinary record reflects the occurrence of three other incidents between October 2014 and April 12, 2016. On October 13, 2014, Claimant failed to perform the duties of his job which resulted in a wide gauge that caused a derailment. He received a time out. In July 2015, he incurred a serious 2 charge. The Carrier imposed a 10 day suspension and a 10 day overhead. The third incident occurred just eight days before the incident that is the subject of this case. On April 4, 2016, in the course of operating a Ballast Regulator, Claimant struck a switch machine with the Regulator wing. This last incident is similar to the incident on April 12 that resulted in the Carrier's decision to order his dismissal.

THE CARRIER ARGUMENT

The Carrier argues that claimant received a fair hearing. It met its burden of proof, when Claimant admitted to striking the switch machine that resulted in sufficient damage that required its replacement. The Carrier maintains that dismissal is the appropriate penalty. Claimant failed to properly control the equipment he was operating. The damage that resulted delayed Carrier operations by 26 hours. Claimant had a serious level offense in each year since 2014. In April 2016, he was assessed a 30 day suspension for striking a different switch machine with a different Regulator. The Carrier treated Claimant with leniency in 2014. Dismissal is the appropriate penalty.

THE ORGANIZATION ARGUMENT

Claimant is a longtime employee. He was operating the Regulator in tight quarters, without assistance, when a wing struck the switch machine. Claimant did not intentionally hit the switch. When this offense occurred, the investigation and discipline had not run its course on the incident that occurred on April 4. The Organization argues that an accident should not be a dismissible offense. The Organization argues that disqualification from operating machines and a lengthy suspension comprise the appropriate penalty for an employee with approximately 17 years service.

BOARD FINDINGS

The Organization maintains that the notification letter was inadequate. It failed to alert Claimant of the rules he allegedly violated. The Organization objects to the April 18, 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 for the Carrier to specify the Rules allegedly violated. Under Rule 25, the Carrier need provide sufficient information to alert Claimant of the conduct that is the subject of the investigation. The Carrier did so in the April 18, 2016 letter.

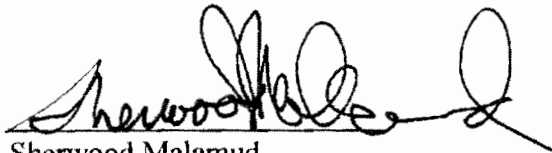
The Board concludes that the Carrier met its burden of proof. Claimant admitted during the investigatory hearing that he operated the Regulator in a manner such that the wing of the machine struck the switch machine.

The Board finds that the Carrier followed progressive discipline, when it issued to Claimant a timeout for the manner in which he performed his duties, when it left a wide gauge that resulted in a derailment in 2014. In 2015, Claimant received discipline. In April 2016, Claimant operated a Regulator in a manner in which a wing struck a switch.

The disciplinary course followed by the Carrier, in this case, conforms to the Carrier's IDPAP policy. There is no basis in this record for the Board to set aside or reduce the penalty imposed by the Carrier.

AWARD

Claim denied.

A handwritten signature in black ink, appearing to read 'Sherwood Malamud', written over a horizontal line.

Sherwood Malamud

Neutral Member

Date: 11/22/2017