

PUBLIC LAW BOARD NO. 7529

Case No. 137

PARTIES
TO THE DISPUTE

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File: D21003616

VS.

CSX Transportation, Inc.
Carrier File: 2016-211581

Referee: 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, and that the parties were given due notice of the hearing.

Under date of September 12, 2016, Claimant, D. E. Browne signed a request to submit this disciplinary matter for processing by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

FACTS

The Carrier hired Claimant D. E. Browne on January 17, 2011. On July 26, 2016, Claimant was working as a Machine Operator on a System Production Tie Team operating a Spike Driver. The machine he operated, Spike Driver SD200713 was pulling a parts bull. It struck the tool box on Spike Driver, 200006. As a result of the accident, and as a precaution one employee was taken to the hospital. The tool box on 200006 had to be welded back on the machine. No evidence that any employee was injured as a result of the accident was presented at the investigatory hearing.

There was another Operator, Lamount German, on the Spike Driver operated by Claimant. Both had the deadman brake engaged. They both acted to stop the machine. Nonetheless, it slid into the other Spike Driver.

Claimant's Employee History reflects that he received discipline in 2014 for sleeping; in 2015, he received a 30-day suspension for plowing through a dragging detector while operating a Ballast Regulator. This accident in 2016 while operating a Spike Driver, that is the subject of this

appeal is his first major offense on top of the prior disciplines for two serious offenses under the Carrier's IDPAP.

The Carrier charged Claimant with violating Rules 712.17 and 712.21 which provide, as follows:

Rule 712.17 when operating on-track equipment, operate at a speed that permits stopping within one half the range of vision. Do not exceed the speed authorized for trains on the same track were listed in the table below.

Rule 712.21(c): maintain the following minimum distances between the machine you are operating and the machine ahead of the described activity, when:

c. Bunching: 40 feet unless speed is 5mph or less, then maintain sufficient distance to prevent an accident.

The Carrier Argument

The Carrier argues that Claimant received a fair hearing. Claimant's admission and the evidence produced at the investigatory hearing establish Claimant committed the rule violations, as charged. The Carrier followed progressive discipline, when it imposed the disciplinary penalty of dismissal for this 2016 accident. Claimant failed to stop. The machine he was operating hit another Spike Driver. The Carrier established the elements of its case by substantial evidence.

The Organization Argument

At the on property hearing, the Organization objected to the introduction of the Rules, since they were not cited in the Notification letter sent to Claimant. The Organization points to the minor damage to the other Spike Driver as a result of the minor bump from the machine operated by Claimant, when it slid into the other machine. The appropriate penalty would be a disqualification. Claimant was forthright and honest. He is a good employee.

Board Findings

This Board has dismissed the Organization's procedural objections. Rule 25 does not require the inclusion of the alleged rules the employee is charged with violating. The Carrier must provide sufficient facts to alert the employee to the conduct that is the subject of the hearing. The August 1, 2016 notification letter contains sufficient detail as to apprise Claimant of the incident that is the subject of the investigatory hearing.

The Carrier presented substantial evidence that Claimant failed to stop his machine. He failed to follow the rules' distance requirements, half the range of vision, as the distance that

would avoid machine slides. Claimant inspected the machine on the date of the accident. The machine's brakes passed inspection.

The Carrier did follow progressive discipline, when it chose dismissal as the penalty for this relatively low seniority employee. There is no basis in this record for setting aside or reducing the penalty imposed by the Carrier.

AWARD

Claim denied.



Sherwood Malamud
Neutral Member
Date: 3/2/2018