

PUBLIC LAW BOARD NO. 7529

Case No. 138

PARTIES
TO THE DISPUTE

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File: 303247

VS.

CSX Transportation, Inc.
Carrier File: 2016-211582

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.

By letter dated September 30, 2016, Claimant, T.A. Pochop requested that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

FACTS

CSX hired Track Inspector T. A. Pochop on May 7, 2007. The Carrier charges that on August 10, 2016 near Avon Indiana at 3;20 P.M. Claimant parked his truck in a manner that required he back out when he finished his inspection of a switch. He failed to inspect his path of movement. He hit a signal flasher. He damaged the signal and his truck at a cost of in excess of \$2615.

On November 13, 2014, Claimant had a similar accident with his truck and a switch machine. The August 10, 2016 incident was Claimant's second vehicle accident in two years. The Carrier concluded that Claimant violated Rule 103.7 which provides that:

Employees must not:

...
c. Deface or destroy property, or

The Carrier charges that Claimant violated General Safety Rule GS 33 that provides:

GS-33. Operating Motor Vehicles

...

C. When parking avoid situations and areas requiring backing movements upon exit.

...

b. When backing, inspect areas to the rear to verify that no personnel or obstructions are in the path of movement.

Division Engineer J.S. Hess, by letter dated September 30, 2016 determined that the appropriate discipline for Claimant's conduct on August 10, 2016 was dismissal.

The Carrier Argument

The Carrier argues that Claimant received a fair hearing. Claimant admitted that he parked his truck in a manner that required him to back out. He hit the flasher signal and damaged his truck. The Carrier established by substantial evidence that Claimant violated Rule 103.7 and Safety Rule GS-33, as charged.

The Carrier maintains that dismissal was the appropriate penalty. He amassed 3 serious offenses. The first, for sleeping on June 12, 2014. This offense was removed just prior to the August 10, 2016 incident. The second serious offense on November 13, 2014, was assessed when he hit a switch machine with his truck. The third serious offense the August 10, 2016 incident is the subject of this appeal. The Carrier imposed the appropriate penalty. This Board should deny this claim.

The Organization Argument

The Organization argues that Rule 103.7 pertains to intentional employee conduct of destroying or defacing railroad property. The evidence establishes this was an accident. Claimant did not violate Rule 103.7. At worst, Claimant was negligent. The Carrier failed to establish Claimant's violation of Rule 103.7

The statement of support filed by Claimant's fellow employees who work with him in Avon Indiana not only establish his popularity, but the positive influence he has on this crew. The Organization maintains that the appropriate discipline for Claimant's violation of General Safety Rule GS-33 is a five (5) day suspension.

Board Findings

Claimant received a fair hearing. Rule 103.7 lists intentional acts that employees are prohibited from performing such as, posting unauthorized information and defacing or damaging Carrier property. Claimant was negligent on August 10, 2016. He did not deliberately damage the Switch Flasher or his truck. He did not violate Rule 103.7.

The Carrier did establish by substantial evidence that Claimant violated Safety Rule GS-33. He parked his truck in a location that required he back out to exit. He did not adequately inspect the route for the movement of his truck. He hit the Flasher and damaged his truck.

The Carrier relies on an offense removed from his Employee History, the discipline imposed on Claimant for sleeping on June 12, 2014. The removal of this offense requires that it not be considered in determining the disciplinary penalty for the August 10, 2016 incident.

The Board determines, therefore, that the imposition of dismissal is not supported by this Employee History and the Carrier's IDPAP policy. The Organization argues that the penalty should be a 5-day actual suspension. However, Claimant received a 5-day suspension for the November 13, 2014 offense, when his truck hit a switch machine.

The level of discipline should increase for this August 10, 2016 offense. The Board concludes that a 30-day actual suspension and 1-year overhead suspension should serve as a warning to Claimant that his next negligent accident will result in his dismissal.

AWARD

Claim denied and sustained, in part. The Carrier shall reinstate Claimant with seniority and benefits, and back pay less pay for 30 work days that shall serve as an actual suspension. His Employee History shall reflect his reinstatement is subject to 1-year overhead suspension.



Sherwood Malamud
Neutral Member
Date: 3/2/2018