

PUBLIC LAW BOARD NO. 7529

Case No. 139

PARTIES  
TO THE DISPUTE

Brotherhood of Maintenance of Way Employes  
Division of the International Brotherhood of Teamsters  
System File: D11912016

VS.

CSX Transportation, Inc.  
Carrier File: 2016-213224

Referee: Sherwood Malamud

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**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 October 24, 2016, Claimant, C.S. Long requested that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

**FACTS**

CSX hired Assistant Track Foreman C.S. Long on February 18, 2008. The incident that gave rise to the discipline at issue occurred on August 7, 2016 in the vicinity of Parkwood, Alabama. Claimant served as the Employee In Charge (EIC) and Flagman on that date. He had 707-track authority over the segment of track for which he was flagging for a contractor from 2:30 to 10:30 a.m. The contractor was grinding the ceiling in a tunnel that encompassed a single Mainline track so that trailer (taller) trains could traverse the tunnel.

On August 7, at 10:12 a.m., from Claimant's observation of the contractors, he believed they would clear the mainline track by 10:30. In a conversation between Claimant and a dispatcher at 10:12 a.m., Claimant indicated that the contractor would be done with their work and in the clear by 10:30 a.m. A train was lined up to travel through Claimant's 707 authority right after its expiration at 10:30 a.m.

The day before, the contractor barely cleared the track in time. The contractor did not follow Claimant's instructions for August 7. The contractor did not clear the track around 10:15. They pressed the limits on August 7. At 10:25 a.m., Claimant was busy setting the switch to get

the contractor off the Mainline, he neglected to get EC-1E authority in anticipation of the expiration of his 707 authority at 10:30 a.m. He allowed 707 track protection to expire.

The contractor's men and equipment were on the Main track for 7 minutes without protection. The Carrier charged Claimant violated Rule 707.13 and 707.14 which provide, as follows:

**Rule 707.13**

The employee-in-charge must plan to have all employees and equipment clear of the working limits before the expiration time. Before clearing the authority, make certain:

1. All men and equipment of the working group are clear of the limits,
2. The track is safe for normal operation was the train dispatcher has been advised of any necessary restrictions for movement.

**Rule 707.14**

When employee-in-charge determines the track cannot be cleared before the expiration time, he or she must take 1 of the following actions at least 5 minutes before the expiration:

- a. Obtain a new authority from the dispatcher, or
- b. Post a flagman at each warning sign.

Claimant never obtained an EC-1E on August 7, 2016. The contractors' personnel remained on the track until 10:37 a.m. They had no track protection for seven minutes. There were seven conversations between the dispatcher and Claimant over the time period of 10:12 to 10:37 a.m.

Claimant notified Assistant Division Engineer Reyes of the contractors' failure to clear the track by 10:30, soon after it occurred. When he arrived at the location of this job, ADE Reyes removed Claimant from service and talked to the contractors about their failure to timely clear the track. By letter dated September 26, 2016, Division Engineer J.E. Paul assessed Claimant with discipline, time served which amounted to a 50-day suspension.

**The Carrier Argument**

The Carrier argues that Claimant received a fair hearing. As Flagman, Claimant was responsible to provide track protection to the contractors' personnel. He failed to do so. He allowed his 707 authority to expire without obtaining EC-1E authority to protect the track from train movement. The Carrier was lenient in the penalty imposed, time served. The Carrier asks that the Board deny this claim.

### **The Organization Argument**

At the on property hearing, the Organization argued that Claimant was denied a fair hearing, because ADE Reyes failed to include the Rules in the Notice of the investigatory hearing.

Claimant noted that he had anticipated communications problems in communicating with the contractors. Two weeks prior to this incident, he requested better radios to enable him to communicate with the contractors. On the date of the incident, he had not received the radios as he had requested. He was unable to communicate with the contractors. The contractors did not follow the plan outlined in the pre-job briefing for August 7.

### **Board Findings**

The Organization objected to the August 9, 2016 notification letter's failure to set out the Rules allegedly violated by Claimant on August 7. 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 August 9, 2016 letter. Claimant received a fair hearing.

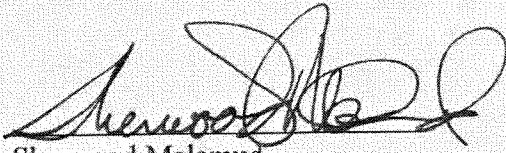
The Carrier met its burden of proof. It established by substantial evidence that Claimant violated Rules 707.13 and 707.14, when he failed to obtain EC-1E protection for the track as his 707 authority expired. The contractors' failure to clear the track according to the daily pre-job briefing and warning that resulted from the contractors' pressing the limits on the day before on August 6, explains their presence on the track from 10:30 to 10:37 a.m. It does not excuse Claimant's failure to request and obtain EC-1E authority to protect the track as his 707 authority expired on August 7, 2016.

Claimant's conduct is a major violation under the Carrier's IDPAP policy. The discipline of time served conforms to the Carrier's policy. There is no basis to reduce or set aside the discipline imposed.

### **AWARD**

Claim denied.

Award No. 139  
PLB No. 7529



Sherwood Malamud

Neutral Member

Date: 2/27/2018