

PUBLIC LAW BOARD NO. 7529

Case No. 143

PARTIES
TO THE DISPUTE

Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters
System File: D603116

VS.

CSX Transportation, Inc.
Carrier File: 2016-214225

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 November 29, 2016, Claimant, Vehicle Operator G. Harris requested that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

FACTS

The Carrier hired Claimant Gary Harris on August 15, 2011. By letter dated August 17, 2016, Assistant Roadmaster K.L. Hill notified Claimant to report to an investigatory hearing that was held on November 2, 2016 to determine the facts and Claimant's responsibility for events that occurred on August 12, 2016, "... when you failed to follow instructions not to unload the backhoe off the trailer without the dump truck attached." Hill accused Claimant of violating Operating Rules 100.1 and 104.3, which provide:

100.1 Employees must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with the instructions of supervisors. When there is uncertainty, employees must:

...

2. Contact a supervisor for clarification.

And

104.3 The following behaviors are prohibited while on duty, on CSX property, or when occupying facilities provided by CSX:

...

d. Carelessness, incompetence, or willful neglect of duties; or

e. Behavior that endangers life or property.

On August 12, Assistant Roadmaster Hill asked Claimant to drop a backhoe in Irvington, Kentucky so it would be available on Monday morning for a job in that area. Previously, on August 5, 2016, Hill had instructed Claimant to have a dump truck hooked to a trailer, when driving a backhoe off of the trailer. Previously, a dump truck was not necessarily employed to attach to a trailer, when removing the backhoe from the trailer. On August 5, Claimant moved a backhoe off of a trailer as Assistant Roadmaster Hill had instructed.

On August 12, Claimant left the trailer with the backhoe on the trailer in Irvington, Kentucky. He did not drive the backhoe off of the trailer on Friday, August 12. He did not leave the dump truck assigned to this area with the trailer and the backhoe. Instead, he drove the dump truck to Owensboro, Kentucky, where Claimant clocked out. By letter dated November 21, 2016 Division Engineer Crossman assessed Claimant with a three day suspension.

Board Findings

Claimant received a fair hearing.

The charge lodged by Hill against Claimant may be read in a number of ways. One interpretation, Claimant is charged with removing the backhoe without the dump truck anchoring the trailer. The record clearly establishes that Claimant left the trailer with the backhoe on it in Irvington, Kentucky. Claimant removed the backhoe, as directed by Hill, with the dump truck tethered to the trailer on Monday morning. Claimant did not violate this supervisory instruction.

Another interpretation of the charge, relates to Claimant's failure to follow Hill's instructions. After considerable review of the record, the Board understands that Hill wanted Claimant to transport the backhoe on the trailer to Irvington, remove the backhoe from the trailer employing the method of tethering the dump truck to the trailer when removing the backhoe, leave the backhoe in Irvington and drive the dump truck back to Owensboro. Claimant failed to remove the backhoe from the trailer.

Hill notified employees under his supervision to the possibility of a callout over Saturday, August 13 and/or Sunday, August 14 due to possible flooding. In order to leave the backhoe ready for transport to a washout, Claimant left the backhoe on the trailer.

The Board concludes that the evidence does not support an inference that Claimant engaged in any deliberate act of insubordination. Instead, it supports a finding that Claimant attempted to respond to both directives of Assistant Roadmaster Hill: to transport the backhoe to Irvington Kentucky, and to leave it on the trailer ready for transport to and for use in any washouts that may develop on that weekend. The evidence does not support a finding that Claimant violated Rule 100.1. He responded to both supervisory directives.

Claimant did not violate Rule 104.3. He was not careless, nor did he willfully neglect his

duties His actions did not endanger anyone.

AWARD

Claim sustained in its entirety.

A handwritten signature in black ink, appearing to read "Shervod Malamud", is written over a horizontal line.

Shervod Malamud

Neutr Member

Date: 2/27/2018