

PUBLIC LAW BOARD NO. 7529

Case No. 145

PARTIES
TO THE DISPUTE

Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters
System File: D21003916

VS.

CSX Transportation, Inc.
Carrier File: 2017-215550

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 faxed December 29, 2016, Claimant, Track Foreman W.R. King requested that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

FACTS

The Carrier hired Claimant W.R. King on October 17, 1978. By letter dated October 27, 2016, Roadmaster B.A. Bias notified Claimant to attend an investigatory hearing to address an incident that occurred at approximately 1440 hours on October 17, 2016, "...when you failed to report train N04013 entered your work limits without authority, were dishonest when questioned by management about the incident. . ." The hearing was held on November 30, 2016. At the time of the hearing Claimant was an Assistant Foreman/Flagman.

The incident that led to Claimant's removal from service occurred on October 17, 2016. Roadmaster Bias received a notice from the Carrier's ERAD system that showed that a train passed 6-feet into Claimant's 707 authority without Claimant's permission. Bias called Claimant about the violation of his 707 authority. Claimant told the Roadmaster that the train stopped within 6-feet of his South end red board and stopped, when in fact it had passed 520-feet past the red board and into his authority. Claimant admitted to lying at the request of a train crew member, who believed the incident would lead to the crew's dismissal. Claimant admitted that the train had traveled into his authority, when Bias confronted Claimant with photographs from the LDR.

At the investigatory hearing, Roadmaster Bias charged that Claimant violated the following Operating Rules: 100.1, 104.1, 104.2a., 104.3d, 104.4a.

Rule 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:

1. Take the safe course; and
2. Contact a supervisor for clarification.

Rule 104.1 When on duty, employees must:

4. Promptly report violations of the rules or special instructions to a supervisor.

Rule 104.2 Employee behavior must be respectful and courteous. Employees must not be any of the following:

- a. Dishonest

Rule 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.

Rule 104.4 The following behaviors are prohibited at all times:

- a. Concealment of facts under investigation.

By letter dated December 20, 2016, Division Engineer K.L. Spivey considered the record developed at the investigatory hearing, and he determined that the appropriate level of discipline is dismissal.

The Carrier Argument

The Carrier argues that there is certain conduct for which an employee does not get a second chance. Here, Claimant attempted to cover up for the train crew that committed a serious violation by entering Claimant's 707 track authority. Claimant had a duty to report that the train entered his authority. Claimant did not report it, when it happened on October 17. He lied to his supervisor, the Roadmaster, when he investigated on October 20. Claimant only told the truth, when later that day, he was confronted with photos of the train in his authority. Under these circumstances dismissal is appropriate.

The Organization Argument

The Organization emphasizes Claimant's long service, 38 years with the Carrier. The Organization acknowledges that Claimant may have made an error in judgement. In the afternoon, Claimant indicated that the train stopped short of his authority. In the evening, of October 20, he told the truth. In light of Claimant's lengthy service the appropriate penalty is a lengthy suspension. The Roadmaster indicated in his testimony that he would be receptive to Claimant's assignment to his supervision.

Board Findings

At the on property hearing on November 30, 2016, the Organization objected to the October 27, 2016 notification letter's failure to set out the Rules allegedly violated by Claimant that would form the basis for the investigation. This Board determined in Awards 106 (MacDougall) and 114 (Malamud); NRAB Third Division Award No. 35022, BMW v. BNSF (Kennerly) 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 October 27, 2016 notification letter.

The Organization raised no other procedural objection to the hearing process. The Board concludes that Claimant received a fair hearing.

The Carrier met its burden of proof. Claimant admitted that when asked on the afternoon of October 20, 2016 whether the train entered his 707 authority on October 17, he claimed it had stopped outside his 707 authority. Then, that evening, when confronted with clear evidence that the train traveled 520 feet past the red board posted by Claimant, he told the truth. There was no damage. No one was injured, the Organization argues.

The Board notes the limited track length of Claimant's authority between mile post 803.6 and 803.5. A large crew signed the job briefing form and were protected by this 707 authority. Claimant made a serious judgment error by not reporting the violation of his authority on October 17. He violated Rule 104.1. He compounded the error in judgment on October 20, when he falsely told supervision that the train stopped within 6-feet of his red board. He violated Rule 104.4.

The question remains whether dismissal is the appropriate penalty to be imposed on this long-term employee. There are two mitigating circumstances to take into account. Claimant's length of service. He recanted within hours of his answering supervisory questions falsely.

He failed to report the violation, when it occurred on October 17. He told the truth only when it was clear that supervision was well aware of what had occurred. This serves as an aggravating factor. His length of service cannot overcome the severity of his misjudgment.

AWARD

Claim denied.

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

Sherwood Malamud

Neutral Member

Date: 2/27/2018