

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 15, (Case No. 15)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE
(Organization File: D70503412)**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2012-132696)**

William R. Miller, Referee and Neutral Member
P. E. Kennedy, Employee Member
R. Paszta, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged H. Helms with violation of Operating Rules - General Rule A and General Regulations GR-6, On-Track Worker Rules and Qualifications - Rules 700 and 704 and was substantial evidence adduced at the Investigation on September 28, 2011, to prove the charges; and was the discipline assessed in the form of permanent dismissal warranted?

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and, that the Board has jurisdiction over the dispute.

The Board has thoroughly reviewed the record and found that the Carrier complied with Rule 25 of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

On August 8, 2011, Claimant was directed to attend a formal Investigation on September 1, 2011, which was mutually postponed until September 26, 2011, concerning in pertinent part the following charge:

"...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1315 hours, on August 4, 2011 at or near mile post QI 130.3, on the Mt. Victory Subdivision, in the vicinity of Rushiana, OH. It is alleged that you set a surface grinder in the gauge of #1 track without securing permission from the employee in charge, resulting in Q008 running over and destroying the surface grinder.

In connection with the above incident, you are charged with failure to properly and

and safely perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules - General Rule A; General Regulations GR-6; On-Track Worker Rules and Qualifications - Rules 700 and 704."

On October 12, 2011, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of permanent dismissal. On September 1, 2011, the Claimant requested expedited handling of his case as provided for in Appendix (N) Expedited Discipline Agreement of the June 1, 1999 BMW/CSXT Agreement.

There is no dispute between the parties that the Claimant admitted responsibility in connection with the aforementioned charges that on August 4, 2011, he was working as a Welder Helper near Mile Post QI 130.3 where he and the Welder were to perform two track welds. Prior to beginning the work, the Welder received track authority from the Train Dispatcher. The crew performed one weld, and then had to clear the track to allow for a passing train. After the crew cleared the track, the Welder gave his authority back to the Train Dispatcher. The Claimant knew the crew had given up its authority, and understood the crew did not have permission to foul the track.

As the crew waited for the train to pass, they performed maintenance on their tools. That maintenance included changing the grinding wheel on the surface grinder. After the grinding wheel was replaced, the Claimant set the grinder in the gauge of the track so the crew would be prepared to work once the train passed. The Claimant did not tell the Welder he placed the grinder in the foul of the track. The Claimant rejoined the Welder in the truck, and by the time he realized that he left the grinder on the active track it was too late and the grinder was struck by the train. Fortunately, there was no serious damage to the train and no one was hurt, but the grinder was destroyed. It is determined that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

As previously stated the Claimant admitted his culpability, thus the only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had a little over four years of service. Under the Carrier's IDPAP Policy, major accidents are Major Offenses, for which an employee may be dismissed for a single occurrence. The facts indicate that this was a major accident and could have caused serious injury to the Claimant or his fellow co-workers. The Carrier has been lenient with the Claimant in the past as the record shows that prior to this incident Claimant had a history of three other major accidents involving Carrier equipment indicating he had a recurring problem with working safely on the railroad. The Board finds and holds that the discipline assessed was not arbitrary, excessive or capricious and was in accordance with the Carrier's Progressive Discipline Policy. The discipline will not be set aside and the appeal/claim is denied.

AWARD

Appeal denied.

A handwritten signature in cursive script, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Referee

Dated: April, 24, 2013