

PUBLIC LAW BOARD NO. 7529

Case No. 159

PARTIES  
TO THE DISPUTE

Brotherhood of Maintenance of Way Employes  
Division of the International Brotherhood of Teamsters  
System File: D91403317

VS.

CSX Transportation, Inc.  
Carrier File: 2017-219765

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 Employee 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 request dated April 5, 2017, Claimant, Track Foreman D. Casarez asked that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

**FACTS**

The Carrier hired D. Casarez on June 23, 2008. By letter dated February 9, 2017, Roadmaster L. Carreno notified Claimant to attend an investigatory hearing with regard to an incident alleged to have occurred on February 6, 2017 for failing to seek clarification as to whether Claimant should make a field weld on track #1 or Track #2. Claimant was offered, but refused to accept a waiver and serve a corrective training day in lieu of attending the investigatory hearing. The investigatory hearing that is the subject of the notice, after a postponement, was held on March 17, 2017.

Roadmaster Carreno testified at the on property hearing that at the job briefing on February 6, 2017, he assigned a field weld to be made at #1 track at Cottage Grove, a 30-day weld, with Claimant serving as the Employee-in-Charge (EIC) providing protection to the welding crew. At the job briefing, the Roadmaster indicated that track time had been obtained between 10:00 a.m. and 2:00 p.m. for track #1. Claimant attempted to obtain track time on track #2 at Dolton IL., based on the report he received from the welders. At the hearing the Roadmaster charged that Claimant violated Rule 100.1, in that he failed to seek clarification from

the Roadmaster as to where the weld should be made. Rule 100.1 provides:

Employee must know and comply with rules, instructions, and procedures that govern their duties. They must also comply with instructions of supervisors. When there is uncertainty, employee must:

...

2. Contact the supervisor for clarification.

Claimant testified at the hearing that Roadmaster Carreno did not identify the track on which he was to make the weld. When at Noon on February 6, the Roadmaster and Claimant met, the Roadmaster asked what Claimant was doing there. Claimant testified he told his supervisor that the welders had found where the weld should be made on track #2, and that the weld would be made at that location.

By letter dated April 4, 2017, Division Engineer Ramsey determined that Claimant should be assessed with a three day suspension and a corrective training day. It is this disciplinary decision that is the subject of this appeal.

### **Board Findings**

Claimant received a fair hearing. He received proper notification of the hearing date, the subject matter of the hearing and he received written notification of the discipline that resulted from the investigatory hearing.

At the investigatory hearing, the charging officer Roadmaster Carreno and Claimant Casarez gave conflicting testimony as to what was said both at the job briefing on February 6 and in Dolton, when the two met at Noon. Neither the Carrier nor the Organization called additional witnesses to corroborate either narrative of events of February 6. The Board is an appellate body. It has no means of making credibility determinations. Clearly, the Division Engineer Ramsey credited the Roadmaster's account of events, when he assessed Claimant with a disciplinary penalty. The question before the Board is whether the record evidence is sufficient to support the conclusion that Claimant violated Rule 100.1-2. by failing to ascertain clarification from Roadmaster Carreno as to which track and location Claimant, as the Employee-in-Charge (EIC) should have provided protection for the welding crew.

The Board review considers the Roadmaster's account of what he said at the job briefing and at Noon at Dolton as to what he told Claimant on February 6. The question remains if this account of what he said standing by itself amounts to substantial evidence of what he told Claimant to do. Whether Claimant's failure to perform the assigned task without further clarification serves as a violation of the Rule 100.1-2?

Claimant was not the foreman of the welding crew that made the controversial weld. His job was to serve as the flagman for the crew as they made the weld. The Roadmaster was the

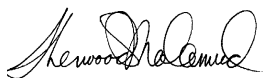
charging officer in this case. He was the only witness he presented at the hearing concerning what he said. The record does not indicate whether he drafted a job briefing form for February 6 that laid out the assignments for the day. The record does not contain the documentation of the track authority for February 6, whether it was for Track #1 or #2. At some point, the welders received the same job briefing as Claimant, according to the Roadmaster's testimony. Neither the welder nor his assistant were called by the supervisor to testify at the hearing. There is not one piece of corroborative evidence in the form of testimony or documentation presented by the charging officer at the hearing.

Since this is a disciplinary matter, it is the Carrier that bears the burden of proof. It must establish each element of its case by substantial evidence. This evidentiary standard measures the quantum of evidence the Carrier must produce to carry its evidentiary burden, to make its case. What the Board has is the testimony of two witnesses with conflicting accounts of what was said. The Board credits the Roadmaster's account.<sup>1</sup> The Board finds that without any additional documentary evidence, evidence that should be readily available to the charging officer, his testimony standing by itself does not constitute substantial evidence of what Claimant was told to do on February 6.

Furthermore, Claimant is charged with not obtaining further clarification from the Roadmaster. The record is clear that they both spoke at Noon before the weld was made. There is no evidence of any confusion on anyone's part between Noon and when any weld was made. Claimant is not charged with insubordination. The evidence does not support a finding of a violation of Rule 100.1-2.

### **AWARD**

Claim sustained.



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Sherwood Malamud  
Neutral Member  
Date: 3/2/2018

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<sup>1</sup>The Board has not detailed Claimant's account of what the Roadmaster told him to do on February 6, 2017. The Board wants to avoid even the appearance that this decision is in any way a credibility analysis of the accounts of the supervisor, the Roadmaster, and Claimant.