

PUBLIC LAW BOARD NO. 7529

Case No. 160

PARTIES
TO THE DISPUTE

Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
System File: D21325917

VS.

CSX Transportation, Inc.
Carrier File: 2017-220915

Referee: Sherwood Malamud

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 letter dated March 28, 2017, Claimant, Machine Operator J. O. Roberts asked that this disciplinary matter be processed by Public Law Board 7529 (Special Board of Adjustment) for expedited handling.

FACTS

The Carrier hired Claimant J. O. Roberts on September 25, 2000. By letter dated March 14, 2017, Manager of Rail Trains, E.A. McWhite directed Claimant to report to an investigatory hearing held on March 28, 2017 concerning an incident that occurred at 4:00 p.m. on March 7, 2017. The Manager observed that Claimant failed to employ 3-step protection while getting on a rail train. In the March 14, 2017 letter, Manager McWhite offered, but Claimant, a Rail Train Operator, rejected the opportunity of participating in 1-day of corrective training in lieu of reporting to an investigatory hearing. The Carrier held the investigatory hearing on March 28, 2017. By letter dated April 17, 2017, Chief Engineer L.E. Pyle assessed Claimant with a 3-day actual suspension and 1-Corrective Training Day based on his review of the record.

At 4:00 p.m. on March 7, 2017 Manager McWhite observed Claimant board the rail train

on which he was the lead operator without 3-step protection.¹ McWhite charged that Claimant's conduct violated Operating Rules 100.1 and 414.4. These Rules provide, as follows:

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 414.4 Do not foul equipment coupled to a locomotive or locomotive consist that is under the direct control of a locomotive operator until 3-step protection has been verbally:

1. Requested by the employee that requires the protection; and
2. Verify that it has been established by the locomotive operator.

Under Bulletin 003, effective January 9, 2017, Rule 414.4 was included and employees including Claimant were trained on the Rule as an operating rule.

McWhite testified at the on property investigatory hearing that during the course of March 7, he observed Claimant board and disembark the rail train several times with 3-step rail protection. On this one occasion, when he observed Claimant board the train immediately after it stopped without 3-step protection, he gathered the personnel subject to his supervision and then took Claimant aside to bring to his attention this safety concern.

At the on property hearing, Claimant testified to his understanding of the reference to fouling equipment in Rule 414.4 applied to situations in which it was necessary to work under a car to tie down the skinny car or to obtain adequate air supply. However, he understood from the CSX Safety Director that to simply board a train by ladder, when it is at a complete stop it is not necessary to obtain 3-step protection. The Organization did not call the Safety Director as a witness or introduce any memo authored by the Safety Director that indicates that 3-step protection is unnecessary when boarding a rail train.

¹ Claimant was not charged with violating Rule 414.6. The Board includes this Rule to define the term 3-step protection. Rule 414.6 states: "To provide 3-Step protection on conventional equipment, the locomotive operator must:

1. Fully apply the independent brake, and if necessary, make an automatic brake pipe reduction sufficient to prevent movement;
2. Center the reverser;
3. Place the generator field in the OFF position;
4. Remain in a position to ensure the switches and levers are not changed; and
5. Maintain the protection until verbally notified by the employee who requested the protection that it may be released."

Board Findings

At the on property hearing on March 28, 2017, the Organization objected to the March 14, 2017 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 (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 March 14, 2017 notification letter. After reviewing the entire record, the Board concludes that Claimant received a fair hearing.

The Board does not engage in a technical definition of terms that would focus on the meaning of the term "foul" as used in Rule 414.4. Claimant is charged with violating two operating rules, 100.1 and 414.4. The subject matter of Rule 414.4 is safety.

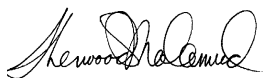
Furthermore, the Organization asserts through Claimant's testimony that the CSX Safety Director does not require 3-step protection to board a stopped train. The Organization bears the burden of establishing this defense. It failed to do so.

On March 7, 2017, Claimant was engaged in the task of loading track on a rail train that is comprised of a number of cars. It is important for employee safety that all cars are stopped, the slack inherent in a multi car train is fully played out through the train after it stops, before an employee embarks or disembarks from the train. The 3-step protection insures that a train has come to a complete stop and the equipment is engaged to prevent movement while an employee embarks or disembarks the train.

Claimant testified to the use of the term "stop" to both stop the train and terminate the loading of rail, when something goes awry. Claimant failed to tie the use of the term "stop" to the circumstance that aroused McWhite's concern. In this case, by substantial evidence, the Carrier met its burden of proof by establishing that Claimant failed to communicate with the train crew to insure the rail train equipment was fully engaged to prevent movement of the train before he mounted the ladder to board the train. The Carrier met its burden of proof. Claimant violated Rule 100.1, he did not take the safe course. The discipline the Carrier imposed is warranted.

AWARD

Claim denied.



Sherwood Malamud
Neutral Member
Date: 3/2/2018