

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
AWARD NO. 25, (Case No. 25)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

**CSX TRANSPORTATION, INC.
(Carrier File: 2012-135046)**

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

QUESTION AT ISSUE:

Did the Carrier comply with Rule 25 of the Agreement when it charged G. Lemmon with violation of Operating Rules - General Rule A, General Regulations GR-2, On-Track Worker Rules and Qualifications - Rules 713 Part 2 Section D and E, 720 and 724 and was substantial evidence adduced at the Investigation on November 6, 2012, to prove the charges; and was the discipline assessed in the form of a 60 calendar day suspension from October 9 through December 7, 2012, 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 October 24, 2012, Claimant was directed to attend a formal Investigation on November 6, 2012, 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 1000 hours, on October 9, 2012, at or near mile post QD 96.8, on the Erie West Subdivision, in the vicinity of MP QD 96.6. It is alleged that you failed to maintain 600 feet between vehicle # 094309 that you were operating on-track and vehicle # 094501 traveling in front of you and that you exceeded a speed that would have permitted stopping with-in one half the range of vision. Additionally, you failed to notify co-workers on the track prior to getting with-in 15 feet to them.

In connection with the above incident you are charged with failure to properly perform the responsibilities of your position, carelessness and possible violations of, but not limited to CSXT Operating Rules - General Rule A; General Regulations GR-2; On-Track Worker Rules and Qualifications - Rules 713 Part 2 Section D and E, 720 and 724."

On November 26, 2012, Claimant was notified that he had been found guilty as charged and was assessed discipline in the form of a 60 calendar day suspension from October 9 through December 7, 2012. On November 28, 2012, 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.

The undisputed facts indicate that on October 9, 2012, Claimant was operating a hi-rail pickup that collided with another hi-rail vehicle in front of him that had stopped. Both vehicles were patrolling the same area for defects and when the lead vehicle stopped at a crossing to allow traffic to pass the Claimant's vehicle struck it. Both vehicles were damaged and Claimant's on-track vehicle had to be hauled away on a flatbed due to the damage done account of the collision.

The Claimant asserted that on the date in dispute he attempted to stop the vehicle, but it would not stop and continued to slide on the wet rail while going downhill. The Organization also argued that the braking system may have failed and attributed to the accident as well as the wet rails. It pointed out that on October 5th, Track Inspector Sonnie notified Roadmaster Baer that the Anti-lock Braking System (ABS) light was on in Hi-Rail Truck #094309 which was the same vehicle Claimant was driving on the date of the incident. The Carrier argued to the contrary that the Claimant failed to take into consideration the dew on the rails in determining how far back he should have stayed away from the other vehicle to be able to stop safely. Additionally, it argued there was nothing wrong with the brakes. Roadmaster Baer testified on pages 29 and 30 of the transcript that the Repair Shop told him that the ABS light being on did not signify that the brakes were faulty and on page 30 he stated the in pertinent part:

"...and they said that the ABS light was on as a result of a bad sensor in the front end, and that had nothing to do with the braking capabilities of the truck."
(Underlining Board's emphasis)

Mr. Baer's testimony was not effectively refuted. On page 66 of the transcript the Claimant testified as follows:

"Cameron: So did you take any exception to this ABS, did you deem it unsafe to operate because of that light, or?"

Lemmon: No." *(Underlining Board's emphasis)*

The Claimant testified that he had no problem with the braking system prior to the accident despite the fact that the ABS light was on. Claimant's testimony confirmed Baer's testimony that the brakes were not faulty and did not contribute to the Claimant's failure to stop his vehicle in a timely manner.

The on-property record reveals that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty of all Rule infractions listed in the charges except Operating Rule 724 that was not applicable in this dispute.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 36 years of service. Prior to this incident Claimant had a serious level one offense and a major offense within the last 27 months and under the Carrier's IDPAP Policy, an employee is subject to possible dismissal for a single occurrence if it is a major offense which the present offense was. Based upon the Claimant's long service the Board is in agreement with the Carrier's decision that dismissal would not have been appropriate and the suspension assessed was corrective in nature. 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: May 20, 2013