

Parties

Brotherhood of Maintenance of Way

To

Employees' Division

Dispute

and

CSX Transportation, Inc

Statement of Claim:

"It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way Agreement."

Findings and Decision:

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.

Michael J. Tolin, ID No. 225847, a track inspector was charged with failing to detect rough track at milepost A 640.2 on several occasions. In addition, he was alleged to have failed to clean the bed of vehicle 94225 on September 24, 2012, after being instructed to do so. After a hearing was held on January 10, 2013, and based on testimony and evidence presented, it was determined that Claimant violated CSX Transportation General Operating Rules – General Rule A; General Reputations GR-5 and CSX Safeway Rules GS-33, and FRA 213. The discipline assessed was the revocation of Claimant's track inspector seniority.

The Organization's procedural arguments will be addressed first. The Organization objects to the introduction of evidence that Claimant had previously inspected the track area on September 14, 19, and 20, 2012. The Organization claims the charge letter should confine the investigation to the September 24, 2012. On the contrary, the charge letter states that Claimant failed to detect the defect "on several occasions". Therefore, the evidence of Claimant's track inspections on September 14, 19, and 20, 2012 is determined relevant to the charge.

The Organization asserts that the charge letter was imprecise and vague. However, the purpose of the charge letter is to give fair notice of the charge so that Claimant may prepare a defense and be accorded

due process. A careful review of the record reveals Claimant understood the charge and presented a well prepared defense. Based on this, the procedural objection is deemed without merit.

The facts of the case indicate Claimant was a track inspector. His area included milepost A 640.2. On September 14, 2012, rough track was reported by an Amtrak train in the vicinity of milepost A 640.2. Claimant was instructed to investigate the track area for defects. Claimant investigated this and found no defects. On September 19, and 20, 2012, rough track was again reported at the location. Both times, Claimant investigated the track area for defects, found no defects and reported that trains were safe to operate at 40 miles per hour. On September 20, 2012, a supervisor and Claimant investigated the track area, the area was tamped. On September 24, 2012, a geometry car revealed the track had a 2.65 inch warp in the track at milepost A 640.2; this required a reduced speed of 10 miles per hour maximum speed.

It is undisputed that Claimant investigated the reports of rough track several times but failed to identify any defect. Claimant seeks to defend this charge by arguing his responsibility was to inspect only the exact area identified in the report and that he should not be held responsible because the defect was located about 528 feet away from the milepost reported. According to the Carrier witness, it is the track inspector's responsibility to investigate for track defects in the vicinity of where the problem is reported. The Carrier witness testified stating: "I expect that we find that, whether it be 500 feet, or whether it be a mile at this location". Transcript p. 37. Claimant should have found the defect which was located at milepost A 640.3. The testimony from the Carrier witness supports the finding that the defect should have been "obvious". Transcript p. 39.

Claimant seeks a favorable finding based on the statement that there was a problematic (i.e. mud hole) track structure at this location. Further, the evidence indicated there were repeated but unsuccessful attempts to correct the track structure. Nonetheless, the record shows the track at milepost A 640.3 exceeded FRA tolerances. Claimant was instructed at least three times to investigate the rough track and failed to report a defect. The problematic track structure or the unsuccessful attempts to correct the track structure does not absolve Claimant of his responsibility to identify the defect in the track. Therefore, the Carrier presented substantial evidence that Claimant violated FRA 213 by failing to detect the defect in the track.

Pertaining to the second charge, Claimant was instructed to clean out the bed of his truck on September 24, 2012. The Carrier witness testified that he found it to be in unsatisfactory condition on two occasions, September 25, 2012 and September 28, 2012. Claimant testified that he cleaned out his truck on September 24, 2012. In opposition, the Carrier presented photographic evidence to dispute Claimant. However, the photographs do not prove the charge. Moreover, the photographs are unclear about what they depict. The sequence of events could have been that Claimant cleaned out his truck but due to his working and moving about the truck became disorganized again. This may have been when the pictures

were taken. Also the pictures do not disprove Claimant's testimony that he clean out the vehicle as instructed on September 24, 2012.

In addition, Rule GS-33 cited by the Carrier is not applicable to this case. Rule GS-33 (F) states "vehicle passenger compartments must be kept in an orderly condition and free of loose items." Specifically, the bed of the vehicle is not a passenger compartment. For these reasons, the Carrier has not presented substantial evidence to show Claimant failed to follow the instruction to clean the bed of his vehicle. The Carrier has not carried its burden of proof.

The discipline assessed in this case was disqualification as a track inspector. Because Claimant's appeal of his failure to comply with the instruction to clean his truck is sustained, a reduction of discipline is warranted. The discipline shall be abated by 25 percent based on the claim being denied in part, and sustained in part. Thus, the undersign finds the Claimant should be disqualified as a track inspector for a period of nine (9) months.

Award:

The appeal is denied in part, and sustained in part, in accordance with the Findings and Decision.

9/13/13
Award Date

Lamont M. Walton
Lamont M. Walton, Referee