

Public Law Board No. 7529

**Brotherhood of Maintenance
Of Way Employes Division**

VS.

CSX Transportation, Inc.

PARTIES TO DISPUTE

Statement of Claim:

“Claim of the System Committee of the Brotherhood that:

1. *The Carrier's imposition of discipline in the form of a thirty (30) calendar day suspension upon Claimant K. Herndon for the alleged violation of CSXT Operating Rules – General Rule and General Regulation GR-2 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D70817813/2013-150590).*
2. *As a consequence of the Carrier's violation referred to in Part 1 above, Claimant shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of the my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way Agreement.”

Findings and Decision:

Public Law Board No. 7529, based on the entire record, finds that the parties are carrier and employee within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute, and the parties were given due and proper notice of the hearing.

It was charged that on June 10, 2013, at approximately 1630 hours, at or near milepost AMH 477.6, on the Augusta Subdivision, in the vicinity of Cullams Lumber Lead, K. R. Herndon, ID No. 212718 (Claimant), became quarrelsome and entered into a verbal altercation with a fellow employee. In addition,

Claimant was charged with, at approximately 1300 hours, on June 11, 2013, on the Augusta Subdivision, in the vicinity of Allendale, SC, he entered into a verbal altercation with a fellow employee. After testimony and evidence were presented, it was determined that Claimant violated CSX Transportation Operating Rules, General Rule A and General Regulation GR-7. Claimant was issued a 30 days suspension.

The Organization argues that the Carrier committed a procedural error when it refused to disclose pre-investigation material before the hearing pursuant to Rule 25. Rule 25 and the record do not support this conclusion. Rule 25 does not require pre-hearing discovery of a witness list and documents to be used at the hearing.. This case does not mandate it for due process either. A review of the record shows the Claimant was not harmed when defending himself against the charge. Moreover, Claimant was afforded a fair and impartial hearing.

The Organization alleged another procedural error under Rule 25 (c), when the Carrier failed to inform employees of their right to consult with a Union representative prior to having them make a written statement. The record, however, disclosed the Hearing Officer "cured" this violation by not admitting the written statements into evidence. For this reason, a violation of Rule 25 (c) is not found in this case.

The Organization asserts Rule 25 was violated when the Claimant was charged with a General Rule A violation but the evidence pointed to facts about possessing a lock-out lock and failing to tell his supervisor about it. However, Claimant was also charged under General Regulation GR-2. This presents whether substantial evidence was admitted to prove this rule violation. Therefore, the Organization's assertion that this case should be dismissed based on a Rule 25 violation is rejected since the merits of GR-2 must be analyzed.

Claimant was employed as a machine operator and worked on a two-man brush-cutter machine. On June 10, 2013, Claimant and Mr. Bethea, another machine operator, were working cutting brush. The record is clear that these two individuals became engaged in a verbal altercation. Also the evidence shows Claimant followed Bethea and continued to "taunt" with him.

On June 11, 2013, Claimant and Bethea again worked together cutting brush. Claimant refused to assist Bethea and Schneider repairing the machine, and again became quarrelsome with Bethea. Claimant also had a verbal altercation with Schneider.

A review of the record, particularly the testimony of Mr. Bethea and Mr. Schneider supports that Claimant acted in violation of the Rule GR-2 by being quarrelsome and engaging in a verbal altercation. General Rule Gr-2 requires that employees behave in a civil and courteous manner when dealing with fellow employees, the rule also prohibits boisterous, profane or vulgar language, and prohibits employees from being quarrelsome and from engaging in altercations while on duty. The record supports the

conclusion that Claimant acted inappropriately and violated Rule GR-2. For this reason, the Carrier proved Claimant committed a rule violation.

Based on the above facts, it is determined that substantial evidence was presented by the Carrier and the Carrier met its burden of proof. Also it is held that the 30 days suspension was appropriate and justified.

Award:

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

9-15-14
Award Date

Lamont M. Walton
Lamont M. Walton, Referee