

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)	
Employes Division - IBT Rail)	
Conference)	
)	
and)	Case No. 61
)	Award No. 61
)	
CSX Transportation, Inc.)	

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline of Claimant G. McLean, in the form of a fifty (50) day actual suspension and five (5) years disqualification from operating any CSX vehicle for the alleged violation of CSXT - Operating Rules 100.1, 103.7, 104.1; CSX Safeway Rules GS-3, GS-24, GS-33 and SJP G-025 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21000514/Carrier File 2014-165490).
2. As a consequence of the violation referred to in Part 1 above, Claimant G. McLean shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On February 26, 2014, the Carrier issued a notice of investigation to Claimant stating:

The purpose of this formal investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1935 hours, on February 15, 2014 at or near milepost AN 587.23, when picking up the log truck (620026) from the repair shop, you failed to perform a vehicle inspection, conduct job briefing and fill out your CDL log book. After being informed by the repair shop that there was difficulty in stowing the boom back in position, you departed without close inspection of the boom and as a result the boom struck an overpass and was damaged because it was not properly stowed.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, careless and negligent operation of your assigned vehicle, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 103.7, 104.1, and 701.4; and CSX Safeway Rules GS-3, GS-24 and GS 33: as well as SJP G-025.

Rule 100 – Application of Rules and Special Instructions, requires employees to know and comply with rules, instructions and procedures governing their duties and, in doing so, to take the safest course but to contact a supervisor should there be a need for clarification on that course (Rule 100.1).

Rule 103.7 prohibits an employee from defacing or destroying CSX property and Rule 104.1 states an employee must “perform duties in a safe and efficient manner that prevents unnecessary delay to customers[.]”

Rule 701.4 states “at the beginning of each tour of duty, or when communications are not immediately available, a lone worker must conduct a job briefing and communicate his or her work plan and intended procedures for on-track safety as soon as possible with: a. His or her designated supervisor; or b. An employee designated by the supervisor.”

General Safety Rule GS-3, Job Briefing, states to conduct a job briefing “before beginning a work activity.” GS-24 (Riding in Motor Vehicles) requires inspection of a vehicle before riding in it or removing it from service and GS-33 (Operating Motor Vehicles) states that an employee “operating commercial vehicles (CDL required) must complete all required pre-trip inspections.”

SJP G-025 requires the driver of a vehicle in excess of 26,000 pounds to “perform a daily walk around inspection and complete the daily inspection form” as well as “complete a driver’s daily logbook of hours driven” and “perform a daily post trip inspection and complete the post trip inspection form[.]”

On March 17, 2014, an investigative hearing convened wherein Claimant and his representative were afforded the opportunity to present witnesses, cross-examine Carrier witnesses and offer statements as well as information and documents pertinent to the matter under investigation.

On April 4, 2014, the Chief Engineer notified Claimant as follows:

A review of the evidence, testimony, and all other documents associated with the hearing demonstrate that the charges against you were proven[.]

Accordingly, based upon my finding of guilty, and the seriousness of the offenses, it is my determination that the discipline to be assessed is fifty (50) actual calendar days[.]
... Additionally, you are disqualified as an Operator of any CSX vehicle for a period of five (5) years[.]

On April 7, 2014, Claimant elected to proceed with a review of the imposed discipline by submitting a claim to this Special Board of Adjustment No. 7529. In doing so, Claimant acknowledged that the decision of the Neutral Member of the Board is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant’s prior service record and Rule 25 of the Agreement.

Organization’s Position

Claimant maintains approximately seven (7) years of seniority and, in terms of disciplinary record, possesses a “relatively spot free and positive work history.” Assigned to System Production Gang 5XC1 (Curve Patch Team) in February 2014, he operated a log truck. On February 15, 2014, he retrieved the log truck at 7:00 p.m. from the repair shop. Claimant met with the mechanic; they walked around the truck as Claimant conducted a visual inspection in the parking lot; he noticed nothing posing a potential concern as the boom rested in its place and not protruding beyond the truck’s height (13’6”). While driving the truck the boom shifted. When Claimant drove under the overpass, the boom’s components were damaged when they hit the overpass. Claimant immediately contacted his supervisor.

There is insubstantial evidence that Claimant violated the rules and any factual disputes must be construed in Claimant's favor under precedent of Award 1 of this Board. Claimant acted appropriately by inspecting the truck prior to driving it. A mechanic, prior to Claimant's arrival at the repair shop, contacted him regarding the boom's operation; however, Claimant never received further communication from the mechanic of any issues. Rather, when Claimant arrived at the shop the mechanic informed him the vehicle was fully operational. The visual pre-trip inspection satisfies the rule. Although Claimant acknowledged during the hearing he did not complete written reports on February 15, 2014, the gang's recordkeeping differs from the rule. The supervisor checked Claimant's CDL logbook prior to the incident but raised no issue until after the accident.

The boom moved during transit but on this vehicle, unlike others, there is no warning device to alert a driver when the boom is out of position. Thus, Claimant "had no way of knowing the boom was out of place." Award 32 of this Board shows that the occurrence of an accident, in and of itself, is not sufficient to establish negligence, carelessness or a rules violation.

Claimant is a hardworking, dedicated employee. In this claim he performed his duties in the same manner as he has done so in the past. There is no controversy of the Board's authority to rescind or minimize the discipline imposed. The claim should be sustained.

Carrier's Position

On February 15, 2014, Claimant retrieved a log truck with rooftop boom from a repair shop. With the boom stored properly, the truck's height is 13'6" for clearance at an overpass. The mechanic had informed Claimant the boom was not stored in the cradle but Claimant did not perform a pre-trip vehicle inspection before taking the truck from the parking lot to drive to the hotel. Claimant struck an overpass (14'1" clearance) damaging the boom. The record shows that Claimant did not complete a pre-trip or post-trip inspection and failed to complete the CDL driver's daily logbook of hours.

Claimant received a fair and impartial investigative hearing wherein substantial evidence establishes the charged rules violations. Although Claimant testified he did not violate any rules such testimony is discredited because there would have been no accident had he followed the rules. The truck remains out of service at the time of the investigative hearing. Any mitigating considerations proffered by the Organization do not insulate Claimant from culpability. Disqualifying Claimant from operating a Carrier vehicle is within management's right to establish qualifications. In accordance with precedent in on-property Third Division Award 37649, Claimant's disqualification is not subject to this Board's review because the Board's authority in this expedited proceeding is restricted to discipline and disqualification is not discipline.

The fifty (50) day actual suspension is appropriate for this major offense in view of Claimant's prior infraction (failure to provide material to other employees as instructed) in April 2013. Precedent in Awards 25 and 31 of Public Labor Board 7163 show the discipline is not excessive and should remain as is.

Findings

Public Law Board No. 7529, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has

jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

A decision by this Special Board of Adjustment No. 7529 is based on the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement. Within that evidentiary framework, the Board renders these findings.

There is substantial evidence showing that Claimant performed a pre-trip visual inspection of the log truck with boom in a well-lit parking lot at the repair shop and conducted a job briefing with himself; however, he did not complete a written report on that pre-trip inspection prior to driving out of the lot. Claimant's inspection consisted of walking around the truck and discussing, with the mechanic present, the completed repairs and repairs yet to be completed but they did not discuss the boom and its positioning or operation. Claimant did not climb onto the truck's roof to inspect the boom; he viewed it from ground level, passenger side of the truck. From ground level, Claimant deemed the boom appropriately positioned.

I looked at the boom and the magnet and everything. Like I said, there's not really a cradle. It's just where the magnet sits. It's just two little bars on both sides. I guess to keep it [boom] from going sideways. When I looked at that boom and magnet, it appeared to me that it was in the, in the correct, it was far enough up and everything and it was fine. And like I said, I done looked at the boom myself and the boom to me looked lower than the seat.

* * * *

To me it was safe. You know, like I said, it look like it was below the seat to me. And also, that seat folds down and folds up, so I don't even know if the 13'6" is for [seat] fold[ed], is the seat up part or down, so when, I mean, but I was going, the seat, I always folds the seat down, so I was going on the assumption that it was 13'6" with a folded seat and it still looked to me like it [boom] lower than the seat.

With the boom stowed on top of the truck, the truck's height is 13'6"; Claimant assumed the seat was down (folded) when he deemed the boom fitting no higher than the seat. Claimant drove the truck towards the overpass marked with a 14'1" clearance. As Claimant proceeded towards the overpass, the brackets holding the magnet hit the overpass causing them to fall away. This resulted in damage to the boom's component parts (steel hydraulic hose, rubber hydraulic hoses and hydraulic valve bank).

Claimant acknowledged that, as vehicle operator, he is responsible for having the boom appropriately situated on top of the truck. Notwithstanding his good faith belief from his visual inspection that the boom was properly situated at a height for safe transit under the overpass, the resulting damage shows that his visual inspection misjudged the boom's positioning on the magnet or, as the Carrier refers to it, the cradle. The Board finds that Claimant did not confirm or verify the boom was securely stowed prior to leaving the lot. When the boom is stowed securely on top of the truck, the truck's height is 13'6" whereas the overpass clearance is 14'1" or about seven (7) inches above the truck's height. Had the boom been stowed securely its components would not have been damaged when Claimant drove the log truck under the overpass. Although Claimant testified the boom can shift during transit and this may have occurred, he also testified when that shift occurs he can hear it in the truck and he did not confirm hearing it while heading towards the overpass, about one (1) mile from the repair shop. Once

the incident occurred, Claimant immediately reported this incident to his supervisor and filed the "Automotive Loss Report." The Carrier noted that the truck remained out of service at the time of the investigative hearing (March 17, 2014) but there were other repairs yet to be completed when Claimant picked up the truck (February 15, 2014) as the mechanic had to order supplies and parts. Also, at the time of the incident the truck was scheduled to return to the repair shop the following week post-incident. The Board finds that the incident is not the principal cause of the truck remaining out of service through March 17, 2014.

The Board finds that Claimant's focus was notifying his supervisor and filing the written report rather than completing his written pre-inspection and post-inspection reports and inserting time in his CDL logbook for driving from the repair shop to hotel. Although Claimant did not complete his written reports for the one (1) day he is charged (February 15, 2014), other reports in the record and Claimant's testimony establish that he routinely completes the required reports.

Given the findings in the preceding paragraphs, Claimant is responsible for the damage to the log truck which results in his violating Rules 103.7 and 104.1. Violation of these rules leads to a violation of Rule 100.1 (comply with rules). There is insufficient evidence to find Claimant violated Rule 701.4, GS-3, GS-24, GS-33 and SJP G-025.

The Board is aware of Claimant's prior infraction for which he accepted a time-out. In assessing the fifty (50) day actual suspension, the Board finds instructive Award 23 of Public Law Board 7104 ("excessive given the particular circumstances") and Award 16 of this Board (suspensions "under the circumstances of this case are excessive"). Based on the findings of the circumstances in this claim, the fifty (50) day actual suspension is excessive. Consistent with precedent in Awards 16 and 35 of this Board to modify a penalty, the excessive fifty (50) day actual suspension is modified to a twenty-five (25) day actual suspension.

With respect to Claimant's disqualification as vehicle operator for five (5) years, the Carrier cites on-property Third Division Award 37249 where the Organization claimed discipline under the camouflage of a disqualification whereas the Carrier stated it was "reasonable" to disqualify the employee given his numerous work errors. The Third Division Board stated "the Carrier properly characterized this matter as a disqualification as opposed to discipline." In the absence of precedent in this record establishing a conclusion differing from Third Division Award 37249, this Board will not modify Claimant's disqualification.

Award

Claim sustained, in part, in accordance with the findings.

Patrick J. Halter /s/

Patrick J. Halter
Neutral Member

Dated on this 4th day of
December, 2015