

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)	
Employees Division - IBT Rail)	
Conference)	
)	Case No. 72
and)	Award No. 72
)	
CSX Transportation, Inc.)	

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

1. The Carrier's discipline of Claimant J. Hailey for the alleged violation of CSXT Operating Rules - 100.1 and 105.1 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D13909814/Carrier's File 2014-174930).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Hailey shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On May 15, 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 0900 hours, on May 5, 2014, in the vicinity of Hulsey Terminal when, after you were instructed to repair tracks at the yard in Hulsey Terminal after a yard blitz in March 2014. On Saturday, May 3, 2014 it was discovered that multiple tracks previously pointed out had not been corrected. You were given specific instructions to repair these conditions and on Monday, May 5, 2014 it was discovered that you had failed to comply with instructions.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, and possible violations of, but not limited to CSXT Operating Rules - 100.1 and 105.1.

Rule 100.1 requires an employee to know and comply with rules, instructions and procedures governing their duties as well as comply with supervisory instructions; employees are to contact a supervisor should there be uncertainty about the safest course. Rule 105.1 instructs an employee to report track defects to the proper authority and requires documentation of repaired defects.

On July 15, 2014, the investigative hearing convened wherein Claimant and his representative cross-examined Carrier witnesses and presented testimony and evidence.

On August 4, 2014, the Division Engineer notified Claimant as follows:

Based on the evidence presented during the course of hearing, sufficient proof exists to demonstrate you are guilty of violating CSXT Operating Rules - 100.1 and 105.1.

Upon my analysis of all the factors related herein, and based upon my finding of guilty, it is my decision that the discipline to be assessed consequent to your proven actions is [a] five (5) calendar days [actual] suspension ... [and] five (5) days overhead suspension for one year[.]

On August 18, 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.

Carrier's Position

CSX provided the Claimant with a fair and impartial hearing in accordance with Rule 25 in the controlling Agreement. Claimant's duties as a Track Inspector are to inspect main line and yard tracks to ensure (i) safe operations on the rail and (ii) compliance with requirements of the Federal Railroad Administration (FRA). Conditions necessitating minor, readily correctable repairs were Claimant's responsibility to handle otherwise the condition would be documented and craft employees would perform corrective repairs.

The Roadmaster, Claimant's supervisor, alerted Claimant to track defects requiring repairs, e.g., loose guard rail bolts, but Claimant never repaired the defects or documented the required defects for craft employees to repair. In this regard, remediated defects are recorded in the database ("ITIS") and Claimant's ITIS reports for April 2014 show no entry for corrective action on the bolts. Although Claimant asserts that he tightened the loose bolts, the Roadmaster observed the bolts remained loose on May 3, 2014, and there were no marks from a wrench placed on the loose bolts which would be indicative of corrective tightening. Claimant asserts the bolts loosened within five (5) days of his tightening them; however, the loose bolts were on an industrial track where operations would not have been constant during that time. Claimant's asserted scenario is unlikely whereas it is more likely he never repaired the loose bolts.

The discipline imposed is appropriate given the serious offense committed by Claimant's failure to properly inspect track. Additionally, Claimant's disciplinary record shows that he failed to properly inspect track in February 2014 or three (3) months prior to this incident thereby causing two (2) derailments for which Claimant accepted a Time Out. Discipline imposed in this matter - - five (5) days' actual suspension and five (5) days' deferred suspension - - is not harsh or excessive because the Track Inspector Agreement calls for ten (10) days' actual suspension and disqualification for one (1) year. Since the discipline is commensurate for the proven rules violations, the claim should be denied.

Organization's Position

Claimant did not receive a fair and impartial investigative hearing as required by Rule 25. For example, the defective notice of investigative hearing fails to accurately cite or adequately identify relevant dates and times of the alleged infractions by Claimant. Missing from the notice is a description of the *exact offense* committed by Claimant. Also, the notices of investigation and discipline reference the threshold event causing the investigation as occurring on May 3, 2014; however, the hearing officer allowed testimony and evidence of matters beyond the 30-day window in Rule 25(d). By allowing testimony on alleged matters dating from February and March 2014, the hearing officer displayed a disregard of BMW's objections and demonstrated unfairness towards Claimant.

Aside from the process defects under Rule 25, there is a lack of evidence for the alleged rules violations. When considering the entirety of the transcript the Carrier fails to establish that Claimant did not inspect and repairs the loose bolts. The Roadmaster (Claimant's supervisor) testified that he inspected the tracks in the months prior to May 3, 2014 and observed no deficiencies. Claimant complied with the instructions or orders issued to him on May 4, 2014. Given the lack of substantial evidence, the discipline is excessive and harsh as well as arbitrary. The claim should be allowed.

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.

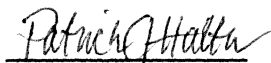
Addressing, first, the matter of Rule 25 - DISCIPLINE, HEARINGS, AND APPEALS, Section 1(a) of Rule 25 states that "employees shall not be suspended nor dismissed from service without a fair and impartial hearing[.]" As the presiding official the hearing officer's duty is to assemble an evidentiary record comprised of testimony and documents relating to the charged rules violations for the deciding official's review. Complicating the hearing officer's duty is the fact that he or she is a Carrier official. Performing the hearing officer's duty through conduct and / or statements exhibiting a bias or prejudice against the Claimant results in a breach of the "fair and impartial hearing" standard required by Rule 25 and diminishes the probative value of the evidentiary record. The consequence for this type of breach has been agreed to by the parties and spelled out in Rule 25 - - "employees shall not be suspended nor dismissed from service[.]"

The evidentiary record shows that the hearing officer labeled Claimant's testimony as "not being truthful" which means he found Claimant's testimony was untruthful as in false, dishonest. The hearing officer's conclusionary statement regarding Claimant's testimony as "not being truthful" violates Rule 25 because, as the Organization noted at the hearing, "you're passing judgement." Expressly stating that Claimant was dishonest, moreover, stains the hearing officer's inquiry into matters occurring in February and March 2014 which were beyond the thirty (30) day window for initiating an action against Claimant in this proceeding where May 3, 2014, is the incident date. The hearing officer's apology does not neuter the prejudicial comment or render it inconsequential. Claimant did not receive a "fair and

impartial hearing” and when that occurs, the terms of Rule 25 dictate the consequence which is no suspension. In view of this finding, the claim is sustained and the requested remedy is granted.

Award

Claim sustained.

A handwritten signature in cursive script, reading "Patrick J. Halter", written over a horizontal line.

Patrick J. Halter
Neutral Member

Dated on this 25 day of
January, 2016