

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)	
Employes Division - IBT Rail)	
Conference)	
)	
and)	Case No. 76
)	Award No. 76
)	
CSX Transportation, Inc.)	

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

1. The Carrier's discipline of Claimant M. Goodwin for the alleged violation of CSXT Operating Rules 100.1, 104.1, 104.2, 104.3 and the CSX Safeway Rule GS-13 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21814814/2014-179797 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Goodwin shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On October 21, 2014, the Roadmaster 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 0850 hours, on October 17, 2014, in the vicinity of the Hamlet Turnout Facility when, while tramming TH 201309 down track, you spun the boom and cab 180 degrees, the opposite direction of travel, and continued to tram in the same direction while not facing the movement, before finally turning back around.

At approximately 1515 you were asked to come to the Foreman's office for a meeting with the Facility Manager, Foreman and Assistant Foreman to discuss this incident, along with several other incidents and concerns. When the facility manager started going over the violations, you cursed and would not listen to the manager who was attempting to talk about your performance issues. You then opened the door, as if to leave, and were instructed to remain, which you ignored, then said, "Write me up." and proceeded to leave the meeting before it was adjourned and without permission to do so.

In connection with the above incident, you are charged with insubordination, failure to properly and safely perform the responsibilities of your position, careless operation of your assigned equipment, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 104.1, 104.2, and 104.3; as well as CSX Safeway Rule GS-13.

On November 6, 2014, the investigative hearing convened wherein Claimant and his representative presented witnesses and documents pertinent to the matter under investigation as well as cross-examined Carrier witnesses and examined Carrier documents.

On November 18, 2014, the Operations Planning Director notified Claimant as follows:

Based on the evidence and testimony, presented by witnesses, as well as yourself during the hearing, substantial evidence exists to demonstrate that, while tramming TH 201309 down the track, you spun the boom and cab 180 degrees, the opposite direction of travel, and continued to tram in the same direction, while not facing the movement before finally turning back around. Substantial evidence also exists in the transcript to demonstrate that you were insubordinate when you cursed and would not listen to your manager who was attempting to talk about your workplace performance and left the meeting before it was adjourned after being instructed to stay. Based on the evidence revealed in the transcript ... you are guilty of violating [CSXT] Operating Rules 100.1, 104.1, 104.2, and 104.3; and the CSX Safeway Rule GS-13.

The Operations Planning Director assessed Claimant a thirty (30) day calendar suspension, disqualified Claimant as a Class "A" Machine Operator for one (1) year as well as ordered Claimant to contact an employee assistance program (EAP) counselor "and indicate a willingness to immediately enroll and participate in an approved program" and "follow any and all instructions and successfully complete all EAP program requirements as directed."

On December 6, 2014, the Organization notified the Carrier that Claimant elected, after discussing this matter with his union representative, to proceed with a review of the imposed discipline by submitting this claim to Special Board of Adjustment No. 7529.

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.

In accordance with the terms of the agreement establishing this Board, the evidentiary record consists of the notice of investigative hearing, transcript of hearing, notice of discipline, Claimant's prior service record and Rule 25 of the Agreement. With respect to Rule 25, the Organization asserts that the Carrier failed to afford Claimant a fair and impartial hearing in violation of the Rule. However, a review of the record convinces the Board that the Carrier afforded Claimant a fair and impartial hearing as required by Rule 25.

As for the discipline assessed to Claimant, Third Division Award 37357 involving the Carrier and Organization captures the Board's function in this matter.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been

ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of its discretion. See Second Division Award 7325 and Third Division Award 16166.

The record contains substantial evidence that Claimant violated the rules as charged. For example, there is the testimony from the Facility Manager, Foreman and Assistant Foreman along with written statements from those individuals and the surveillance video recording Claimant's "tramping TH 201309 down track" showing that Claimant "spun the boom and cab 180 degrees, the opposite direction of travel, and continued to tram in the same direction while not facing the movement, before finally turning back around." Other evidence is Claimant's testimony acknowledging he operated his assigned equipment in an unsafe manner ("I feel like I was safe in direction of movement until I made the spin at 180 degrees"). In response to the Facility Manager's attempt to conduct a meeting to discuss this incident and other performance concerns, Claimant cursed at the manager ("This is bullshit"), displayed a quarrelsome manner ("I don't have to take this" and "write me up") and exited the meeting in disregard of the manager's instruction to remain ("Mike stay, I need to finish talking with you.")

Claimant's unsafe operation of assigned equipment, quarrelsome manner directed at the manager and insubordination are a major offense under the IDPAP. A 30-day suspension and 1-year disqualification from Class "A" Machine Operator is not harsh, arbitrary or excessive discipline and the Carrier's directing Claimant to the EAP will assist him in maintaining his employment relationship with the Carrier.

Since the allegations in Part 1 of the claim are not established, the claim is denied.

Award

Claim denied.



Patrick J. Halter
Neutral Member

Dated on this 17th day of
February, 2016