

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)
Employees Division - IBT Rail)
Conference)
)
and)
)
)
CSX Transportation, Inc.)

Case No. 78
Award No. 78

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

1. The Carrier's discipline of Claimant E. Black for the alleged violation of CSXT Operating Rules 100.1, 104.1, 104.3, 104.5 and 712.2 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier's File 2015-182420 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Black shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On December 2, 2014, Manager of Bridges Luciana issued a notice of investigation to Claimant stating:

The purpose of this formal investigation [on December 16, 2014] is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1315 hours, on November 19, 2014, in the vicinity of milepost BB 7.4 in the Cincinnati Terminal. You failed to use outriggers when operating CSX 487013 on number 2 track. This action caused the spec 486 truck to flip onto the passenger side of the vehicle, landing on the east side of the bridge.

In connection with the above incident, you are charged with failure to properly and safely perform the responsibilities of your position, careless operation of equipment, and possible violations of, but not limited to, CSXT Operating Rules 100.1, 104.1, 104.3, 104.5 and 712.2.

Following mutually agreed to postponements by the Carrier and Organization, the investigative hearing convened on January 14, 2015 and continued to completion on January 15, 2015.

On January 28, 2015, Division Engineer Crossman notified Claimant as follows:

A thorough review of the transcript and exhibits demonstrates that during the hearing you and your representative were allowed to cross-examine all Carrier witnesses and present any witnesses, **documents and testimony on your behalf,**

in accordance with your contractual due process rights. All objections were properly addressed by the conducting officer during the course of the hearing.

Based on the evidence and testimony presented by witnesses, as well as yourself during the course of hearing, sufficient proof exists to demonstrate that on November 19, 2014, you violated CSX Operating Rules 100.1, 104.1, 104.3, 104.5 and 712.2.

Upon my analysis of all the factors related herein, and based upon my finding of guilty, i[t] is my decision that the discipline to be assessed consequent to your proven actions is your immediate dismissal in all capacities from CSXT Transportation.

On February 4, 2015, the Organization notified the Carrier that Claimant, after discussing this matter with the Organization, elected to proceed with a review of the imposed discipline by submitting this claim for "expedited handling as provided for in Appendix 'N' Expedited Discipline Agreement of the June 1, 1999 BMW/CSXT Agreement."

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.

Claimant agreed to "expedited handling" of this claim where a decision 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. With respect to Rule 25 - Discipline, Hearings, and Appeals, the Organization asserts that the Carrier did not comply with the Rule.

Specifically, the Organization asserts the Carrier violated Rule 25(b) as Claimant did not receive "written confirmation" that he was "held out of service pending the hearing", Rule 25(c) as Claimant was not informed of his opportunity for union representation when he was directed to write a statement and Rule 25(d) as Claimant did not receive "reasonable prompt advance notice, in writing, of the exact offense of which he is accused[.]" Should the evidence in this record establish the Organization's assertion, then a violation of Rule 25 occurred.

Rule 25(b) states:

(b) When a major offense has been committed, an employee suspected by the company to be guilty thereof may be held out of service pending the hearing and shall be given written confirmation thereof.

Prior to the hearing convening on January 14, 2015, Claimant received "written confirmation" that he was "held out of service pending the hearing." Given this finding, no violation of Rule 25(b) occurred.

Rule 25(c) states:

(c) An employee who is required to attend an investigation and or make a statement prior to a hearing in connection with any matter which may eventuate in the application of discipline to any employee shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing. A copy of his statement, if reduced in writing and signed by him, shall be furnished him and his union representative.

Claimant as well as other employees of Bridge Team 6P86 were “required to . . . make a statement prior to” the investigative hearing. Rule 25(c) states that “an employee . . . shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing.” The Organization asserts the Carrier did not comply with this provision in Rule 25(c). In responding to the Organization’s assertion, the conducting officer stated:

At this time, I am going to bring in the witnesses as far as their responses to your allegations about the statements. The Carrier did ask each employee if they were aware of what they were signing. The Carrier did ask each employee if they wanted representation from the union and they, they actually said no. So for you to bring in the fact that they were not offered the opportunity was irrelevant. . . . Each employee could have requested a copy[.]

Whether the Organization established its assertion is determined within the evidentiary framework for this expedited proceeding. Drawn from this framework, the evidence shows that certain members of Bridge Team 6P86, including Claimant, were uninformed as to the Carrier’s offering them an opportunity to contact a union representative before they produced written statements. Given this finding, a violation of Rule 25(c) occurred.


Rule 25(c) also states that “[a] copy of his statement, if reduced in writing and signed by him, shall be furnished him and his union representative.” The evidence in this record does not establish an arrangement between the Carrier and the Organization for complying with this provision other than the terse wording itself. The Bridge Supervisor testified that he did not provide the team members, including Claimant, with copies of their signed written statements. Given this finding, a violation of Rule 25(c) occurred.

When the hearing convened, the conducting officer stated that “the hearing officer does not rule on the evidence” and “evidence speaks for itself.” At the close of the hearing, after the Organization presented its summation on the evidence and argument in this record, the conducting officer stated Rule 25 was “irrelevant” in this claim.

The Board finds Rule 25 is relevant as it pertains to the matters under investigation. It is a rule of substance as reflected by the Carrier’s and Organization’s agreement to remove discretion in remedy formulation and to stipulate the remedy in Section 4 when the rule is violated. In the circumstances of this claim, a violation of Rule 25 occurred. Consequently, the Organization’s and Carrier’s stipulated remedy in Section 4 is granted.

Award

Claim sustained.



Patrick Halter
Neutral Member

Dated on this 22nd day of
MARCH, 2016