

PUBLIC LAW BOARD NO. 7529

Brotherhood of Maintenance of Way)	
Employees Division - IBT Rail)	
Conference)	
)	
and)	Case No. 81
)	Award No. 81
)	
CSX Transportation, Inc.)	

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

1. The Carrier's discipline of Claimant R. Flatt for the alleged violation of CSXT Operating Rules General Rule A, General Regulations GR-2, Safeway Rules GS-1, GS-3 and GS-5 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21001915 / 2015-183289 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Flatt shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On April 30, 2012, Manager of Bridges Cornelius issued a notice of investigation to Claimant stating:

The purpose of this formal investigation [on May 10, 2012] is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1430 hours on April 11, 2012 at or near mile post AN 728.9 on the Dothan Subdivision, in the vicinity of Bainbridge, Georgia, when it was alleged that you failed to control and protect your work site from known safety hazards, you failed to perform an updated job briefing concerning this hazard when the circumstances of the job changed; and on Thursday, April 12, 2012, the morning after the above incident, while attempting to leave the carrier-provided lodging site, you failed to follow specific instructions issued by Mr. T. M. Paine, Assistant Division Engineer Structures, to fill out a required PI-1A involving the incident of the preceding day.

In connection with the above incidents, you are charged with failure to properly perform the responsibilities of your position; failure to follow instruction; failure to conduct an appropriate updated job briefing; failure to control a known hazard, and possible violations of, but not limited to, CSXT Operating Rules - General Rule A, General Regulations GR-2; as well as, CSX Safeway Rules GS-1, GS-3, and GS-5.

Following a mutually agreed to postponement by the Carrier and Organization, the investigative hearing convened on May 21, 2012 wherein Claimant and his representative were afforded the opportunity to present witnesses and documents pertinent to the matter under investigation and examine Carrier witnesses and documents.

On June 8, 2012, Division Engineer Spatafore assessed Claimant a thirty (30) day suspension based on the following:

Based on a review of the evidence and testimony, I have determined that sufficient proof exists to support that your actions in connection with the events of April 11 and subsequent thereto demonstrate that you failed to properly perform the responsibilities of your position in that you failed to follow instruction issued by Mr. Paine thus impeding a timely investigation of the incident. Also, you failed to conduct an appropriate updated job briefing regarding the work site and activities necessary to complete your assigned tasks. Moreover, you failed to protect yourself from known controllable hazards (e.g., tie spacing and alleged hydraulic fluid in the old tie). Consequently, your proven actions were in violation of CSXT Operating Rules - General Rule A; General Regulations GS-2; as well as, CSX Safeway Rules GS-1, GS-3, and GS-5.

On February 25, 2015, the Organization notified the Carrier that Claimant, after discussing this matter with a representative of 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 Employee 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" for this claim. In doing so, Claimant acknowledged that the decision is based on the evidentiary record composed 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. A review of the record convinces the Board that the Carrier afforded Claimant a fair and impartial hearing as required by Rule 25.

Claimant is charged with the following rules violations:

- General Rule A: know and obey rules and special instructions related to job duties;
- General Regulations GR-2: employees must not be insubordinate or willfully neglect duties;
- GS-1 Safety Responsibilities: employees must ensure that work areas and environment are clean, orderly and protected from controllable hazards;
- GS-3 Job Briefing: identify, eliminate, contain or communicate all potential hazards related to the job when conducting a job briefing;

- GS-5 Reporting Injuries or Incidents: form PI-1A must be completed by the employee reporting the injury and completed "as soon as practicable" when "urgent medical attention" is needed for a serious injury.

The Board finds there is substantial evidence supporting the rules violations related to the job briefing and safety hazard. On April 11, 2012 at 0930 hours Claimant and other members of Gang 6M73 arrived at the Flint River Railroad Bridge to remove approximately twelve (12) rotten bridge ties and install new ties. Prior to work commencing, Employee-In-Charge (EIC) Knight conducted a job briefing wherein he identified specific hazards of "Slips / Trips / Falls" and noted that "rotten ties could give in and watch out for bad footing with these conditions."

With three (3) or four (4) rotten ties remaining for removal, work stopped due to an oil leak from the tie handler positioned on the bridge. An estimated pint of oil sprayed a radius of three (3) to four (4) feet onto the rails and rotten ties that had not been removed. With the leakage stopped and oil cleaned from the bridge using the spill kit, EIC Knight ensured the gang was "aware" of work conditions and work resumed.

At approximately 1430 hours Claimant finished spiking the last newly installed tie. He recognized that the spacing or gap between the last new tie installed and an adjacent, rotten tie was too wide - - ten (10) inches - - and posed a safety hazard. Claimant spoke in a loud voice to gang members that the "tie was slewed and needed to be straightened" with a bar which he instructed Bridge Mechanic Norris to retrieve; however, Norris testified that he retrieved the bar from the truck without any instruction to do so.

Norris retrieved the bar. As he turned away towards Claimant on the bridge, Norris witnessed Claimant's foot slip off the tie and Claimant falling into the safety hazard of the open gap. Norris, the sole witness to the incident, stated "Yeah his left leg went in, went into the ties and his body leaned back, his back hit the rail, and both arms went on the outside of the rail."

The Carrier transported Claimant to the hospital for treatment of scrapes to his right arm and right leg. Upon Claimant's release from the hospital on the evening of April 11, Assistant Division Engineer - Structures (ADE) Paine transported Claimant to the hotel. Paine: "I told Mr. Flatt that I understand that you had a pain shot and I'm not going to ask you to work on this PI-1A tonight [April 11], but tomorrow [April 12] before you leave we're going to have to get this paperwork filled out and he acknowledged that he understood and he went on in the hotel."

The next morning (April 12) ADE Paine approached Claimant in the hotel parking lot at 0530 hours and stated "we really need to fill out this paperwork before you leave and his response was I'm hurting I ain't filling out nothing." Paine reminded Claimant that "we talked last night we've got to get this paperwork filled out, and he said I told you I ain't filling out nothing."

Minutes later that morning, Bridge Mechanic Johnson accompanied Claimant into the parking lot to load Claimant's bicycle on his truck. Johnson was present when ADE Paine discussed with Claimant, a second tie, completing form PI-1A. Johnson states Paine never instructed or directed Claimant to complete the form. Regardless, Claimant was on notice from the evening of April 11 and the first conversation on April 12 that he was to complete the form prior to leaving the hotel.

Claimant eventually submitted PI-1A on April 20; it was the first notice to the Carrier that Claimant attributed his injury to oil on his boots. This necessitated an onsite investigation to determine whether there was oil on the bridge that contributed to or caused Claimant's injury. The investigation revealed little, if any, oil and Mechanic Norris stated there was no oil on the old tie or new tie.

The Board finds that on April 11 Claimant did not conduct a job briefing to control or isolate the safety hazard which resulted in Claimant incurring an on-the-job injury. Claimant's conduct violated GS-1 (Safety Responsibilities), GS-3 (Job Briefing) and General Rule A (know and follow the rules).


The Board also finds that on April 12 Claimant's conduct was insubordinate when he did not complete the injury report form prior to leaving the hotel. Claimant's conduct violated GS-5, Reporting Injuries or Incidents, General Regulations GR-2 (insubordinate) and General Rule A (know and follow the rules).

Although Claimant asserts his "physical condition" precluded him from completing the form on April 12, his assertion does not conform to his conduct on that day as he demonstrated physical ability and mental acuity to drive his truck from the hotel (Bainbridge) to his residence (Cusetta). As for the medical note submitted by Claimant, it reflects two (2) different handwriting styles which renders it of little evidentiary value for determining the author of the note.

Claimant, with thirty-three (33) years of service, can be expected to know the rules and follow them. On April 11 and 12, 2012 Claimant did not follow the rules and, as a result, the Carrier assessed a thirty (30) day suspension. The discipline assessed for the proven rules violations is not arbitrary or excessive. Since there is no violation of the Agreement, the claim is denied.

Award

Claim denied.


Patrick Halter
Neutral Member

Dated on this 22nd day of
MARCH, 20 16