

PUBLIC LAW BOARD NO. 7529

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

Case No. 82
Award No. 82

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

1. The Carrier's discipline of Claimant J. Pearson for the alleged violation of CSX MWI G-008-A was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D21002015/2015-183548 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Pearson shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

Background

On August 27, 2008, the Carrier issued a notice of investigation to Claimant stating:

The purpose of this investigation [on September 9, 2008] is to determine the facts and place your responsibility, if any, in connection with an overhead cable and power line that was struck by the boom of CSX vehicle 610012, which was moving in the raised position. This occurred on the Monroe Subdivision main track, MP SF 301.8 at approximately 11:38 hours, August 19, 2008 and caused a support pole on the west side of the track to fall. This caused a disruption of service to two houses and blocked the Monroe Subdivision main track for over six (6) hours resulting in train delays and additional train crews. In addition to the costs associated with train traffic and train crews, the Electric company had to send repair crews to the location to clear the power line and reset the pole that was knocked down.

In conjunction with the incident mentioned in the preceding paragraph, you are charged with, but not limited to, failure to perform your duties in a safe manner, failure to use a boom raised tag on the steering wheel and failure to inspect the truck to be sure the boom was seated and secured prior to moving and possible violation of.

1. CSX Operating Rule A
2. CSX Operating Rule GS-2 parts 5 and 6
3. CSX Operating Rule GR-16
4. CSX Safe Way Rule ES-11 part c
5. CSX MWI G-008-A

On September 9, 2008, the investigative hearing convened wherein Claimant and his representative were afforded the opportunity to present witnesses and documents pertinent to the matter under investigation and afforded the opportunity to examine Carrier witnesses and documents.

On September 24, 2008, the Assistant Division Engineer – Structures notified Claimant as follows:

Based on a thorough review of the transcript of this investigation, the facts support and confirm that you failed to comply with CSX MWI G-008-A, number 24, by failing to make a final walk around inspection of the truck prior to moving to ensure the boom was secure and outriggers and blocking were removed. This would have prevented the incident. Since there was no boom-raised tag in the truck you could not be held totally responsible for this failure. Any CSX employee that worked that day with this truck or at sometime previous to that day would also be responsible for that failure. You were in violation of the remaining four (4) rules you were charged with due to your driving the truck with the boom being left in the upright position (26' height) and the subsequent contact with the overhead wire lines. Due to the seriousness nature of this incident and charges, discipline assessed is thirty (30) days actual suspension[.]

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 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" for this claim. In doing so, Claimant acknowledged that the decision of the Neutral Member of this Board 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.

As for the discipline assessed to Claimant, on-property Third Division Award 37357 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.


Claimant's regularly assigned position is Little Giant Crane operator with Gang 5X17. On the incident date of August 19, 2008, Claimant was assigned to assist Gang 6F75 with the loading of ties onto a push car. The Boom Truck Operator for Gang 6F75 informed Claimant that the truck was "ready to go" which Claimant interpreted as safe to drive the truck forward. Claimant did not conduct an additional walk around to verify the truck was "ready to go" whereupon Claimant drove the truck forward with an unsecured boom and the incident occurred.

MWI G-008-A, Proper Use of Cranes and Trucks and Boom Trucks, states at Step 24 that an employee, prior to moving the truck, will "take an additional and final around inspection to ensure that the boom is secure outriggers and blocking is removed and travel path is clear for movement." Claimant did not perform the walk around; his testimony is substantial evidence that he violated Step 24 which resulted in thousands of dollars in damages. Aside from the damages, Claimant's violation of Step 24 is a violation of Rule A (obey the rules and special instructions relating to duties), GS-1 (willful neglect of duties), GR-16 (perform duties in the safest manner) and Safeway Rule ES-11 part c (keep the boom away from power lines).

As for discipline assessed, the record shows there have been other incidents of this type where employees received less, if any, discipline than the suspension assessed to Claimant. Although the Carrier noted those incidents did not involve a "live" power line, Safe Way Rule ES-11, part c (keep the boom away from power lines) does not distinguish between "live" or "dead" power lines. Additionally, supervisors acknowledged Claimant's exemplary four (4) year employment record reflects a dedicated, reliable and conscientious team member. Given these findings, the assessed thirty (30) day suspension is excessive and, consistent with precedent in Awards 16 and 35 of this Board to reduce an excessive penalty, a fifteen (15) day suspension is assessed to Claimant.

Award

Claimant is assessed a fifteen (15) day suspension.


Patrick J. Halter
Neutral Member

Dated on this 14th day of
March, 2016