

**PUBLIC LAW BOARD NO. 7529
CASE NO. 83
AWARD NO. 83**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	
(Organization file: D09903415 CSX))	PARTIES TO THE
)	DISPUTE
)	
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2015-183455))	

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. *The Carrier’s imposition of a thirty (30) day suspension and a two (2) year disqualification from any position requiring operation of a CSXT vehicle, machinery, equipment or requiring a CDL upon Claimant W. Foreman for the alleged violation of CSX Operating Rules 100.1 and 104.3 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File D09903415/2015-183455 CSX).*
2. *As a consequence of the violation referred to in Part 1 above, Claimant W. Foreman shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.”*

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Agreement, as amended, that this Board is duly constituted by Agreement dated February 25, 2012 that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. The parties have been unable to resolve this issue and they have placed the issue before this Board for adjudication.

After a thorough review of the record, and a hearing on this matter held on July 19, 2016, the Board concludes that the Claimant in this case was a Maintenance of Way employee on the dates in question in this claim.

The facts in this case are not in dispute. The Claimant has approximately fourteen (14) years of seniority in the Carrier’s Maintenance of Way Department. On December 9, 2014, the Claimant backed a sixty-foot truck into an intersection, striking a mailbox, during a crossing replacement project on a residential road. Immediately after striking the mailbox the Claimant contacted the homeowner and also spoke with his supervisor. The homeowner took no exception to the

incident and declined to receive compensation from the Carrier. An investigative hearing took place on February 4, 2015. During the hearing, the Claimant acknowledged that other workers were available to assist him while backing up; however, he did not request assistance. Upon reviewing the evidence and testimony Carrier determined that Claimant violated CSX Operating Rules 100.1 and 104.3 by failing to comply with proper safety procedures resulting in the striking of the mailbox. Upon this determination, the Claimant received a thirty (30) day suspension without pay and a two (2) year disqualification from any position requiring operation of a CSXT vehicle, machinery, and equipment.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization's position is that the Carrier has failed to meet its burden of proof in its determination that the Claimant has violated CSX Operating Rules 100.1 and 104.3 and even if it has, the discipline imposed is arbitrary, unwarranted and a violation of the Agreement. The Organization states that the Carrier has not provided any specifics for their determination of guilt within their disciplinary notice. It is their belief that the Claimant operated his vehicle in the safest manner possible and in a way that is accepted by the Carrier. The Claimant states there was nothing out of the ordinary in this situation and that he is not expected or required to use a watchman to assist him in reversing his vehicle. Further, it is the Organization's position that an imposition of a thirty (30) day suspension without pay and a two (2) year disqualification from operating machinery, equipment or a vehicle is inappropriate. The Claimant worked to the best of his ability and did not act recklessly or carelessly.

POSITION OF THE CARRIER:

The Carrier's position is that the Claimant was granted a fair and impartial hearing where he was represented by the Organization, received proper notice of the charge, sufficient time to prepare a defense, the opportunity to present and examine evidence, and the opportunity to present and cross-examine witnesses. The Carrier states they have met their burden in determining that the Claimant violated CSX Operating Rules 100.1 and 104.3. In support they assert that the Claimant admitted he was driving the vehicle, he failed to acquire assistance in backing out, and that the Claimant did in fact strike the homeowner's mailbox. The Carrier asserts that the Claimant's actions demonstrate his violations of the rules when he did not take the safe course and he engaged in behavior that endangers life and property. The Carrier states that the discipline is proper because this is the Claimant's third serious offense within three years and such actions have a maximum penalty of dismissal, therefore it is reasonable.

RESULT:

The Carrier, as this is a discipline case, has the burden of proof concerning this claim.

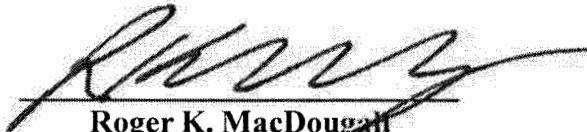
As to the procedural issue at hand, a Hearing Officer is not held to the same standard as an arbitrator or a judge and while the handling of the investigative hearing may not have been perfect, it does not rise to the level of procedural failure warranting dismissal of the case.

The Claimant admits that while backing out he did not ask for assistance and in doing so he struck the mailbox, therefore it can be determined that he is in violation of the rules. Thus, the Carrier has met its burden of proof as to the events in question.

Turning to the quantum of discipline, while the Board recognizes that the Claimant is a fourteen (14) year employee, the record clearly shows that he has a past disciplinary record which supports the time out of service without pay assessed by the Carrier. A Carrier has the right to establish reasonable rules related to the safe operation of its business. Therefore, the Board will not interfere with the 30-day suspension assessed. However, the two (2) year disqualification of operation of a CSXT vehicle, machinery, and equipment or requiring a CDL will end upon the issuance of this award provided that the Claimant completes the normal reinstatement procedures required by the Carrier.

AWARD:

The claim is sustained in part, in accordance with the findings above.


Roger K. MacDougall
Chair and Neutral Member

Dated:

2/17/2017

At: Chicago, IL