

**PUBLIC LAW BOARD NO. 7529
CASE NO. 86
AWARD NO. 86**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	
(Organization file: D70801615 CSX))	PARTIES TO THE
)	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.)	
(Carrier file: 2015-183975))	

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

1. The Carrier's discipline of Claimant M. Bryant for the alleged violation of CSX General Safety Rules ES-13.1, GS-3 and GS-8 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File D70801615/2015-183975 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Bryant 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. At the time of the dispute the Claimant was assigned and working as a track inspector on the James River Subdivision within the C&O Division. The Claimant has established and maintained seniority in the Carrier's Maintenance of Way Department. He received a letter dated January 6, 2015 stating that a formal investigation would take place based on allegations that on December 23, 2014 he was in violation of FRA bridge worker safety standards and an inadequate job briefing. The incident occurred when the Claimant and several other employees were removing ballast from a section of track that traversed a bridge. During their work, an employee stepped backward and fell off the bridge into the creek

below. A job briefing had been held prior to the incident and all employees acknowledged that they were to remain within the track gauge to avoid falling or needing fall protection.

The formal investigation took place on January 22, 2015 and by letter dated February 10, 2015 the Claimant was informed that he had been found guilty of violating General Safety Rules ES-13.1, GS-3 and GS-8. The discipline assessed was a suspension of time served for a total of a forty-nine (49) day actual suspension.

The Organization appeals this decision to this Board.

POSITION OF THE ORGANIZATION:

It is the Organization's position that the Carrier failed to afford the Claimant protections provided to him by Rule 25. Further, that the Carrier failed to meet its burden of proof in showing that the Claimant violated the cited rules and the discipline imposed was excessive, unwarranted and in violation of the Agreement. The Claimant confirms that there were multiple adequate job briefings that were conducted wherein they discussed, as a group, the appropriate type of protection that would be required and collectively decided the safest and most efficient course of action necessary when performing their work. At all times during the incident the Claimant was in compliance with all of the charged rules and there is no evidence that suggests the Claimant is in violation of the rules. The Organization believes that the discipline imposed was inappropriate and should be progressive rather than punitive in nature.

POSITION OF THE CARRIER:

It is the Carrier's position 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. During the hearing, the Carrier provided the Organization with each exhibit and allowed multiple recesses for the Organization to review, satisfying Carrier's obligation. Further, the Carrier followed Rule 25(b) when they removed the Claimant from service prior to the hearing, stating that "when a major offense has been committed, an employee suspected by the Company to be guilty thereof may be held out of service pending his hearing." The Carrier has met its burden of proof stating that although a job briefing took place an employee managed to step off the bridge and fall into the water below. The Claimant also failed to update his job briefing notebook appropriately and therefore violated the applicable job briefing rules. The discipline assessed was proper and in accordance with the standing policies. Safety rules are paramount to the railroad industry and must be followed. Claimant's time served is well below the possible permissible discipline and therefore was not harsh or excessive.

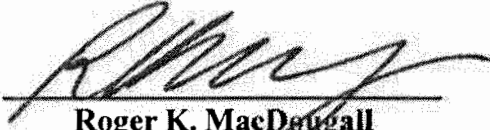
RESULT:

In this case, the Carrier bears the burden of proof to show that a Rule was violated and that discipline could be assessed. The facts clearly indicate that the Claimant was not on the bridge when the incident occurred. As a result, the Claimant cannot be disciplined for actions that he did

not partake in. The actions of others cannot be held against him, as it was not proven that he had broken any rule.

AWARD:

The claim is sustained.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL