

**PUBLIC LAW BOARD NO. 7529  
CASE NO. 87  
AWARD NO. 87**

<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>	)	
<b>EMPLOYES DIVISION – IBT RAIL CONFERENCE</b>	)	
<b>(Organization file:D70801715 CSX)</b>	)	<b>PARTIES TO THE</b>
	)	<b>DISPUTE</b>
<b>vs.</b>	)	
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
<b>(Carrier file: 2015-183976)</b>	)	

**STATEMENT OF CLAIM:**

“Claim on behalf of the System Committee of the Brotherhood of Maintenance of Way  
Employees on the CSX Transportation, Inc.:

Claim on behalf of D. Cabassa 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 D70801715/2015-183976 CSX). As a consequence of the violation D.  
Cabassa 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 established and maintained seniority in  
the Carrier’s Maintenance of Way Department. At the time of the incident he was assigned and  
working as a trackman on the James River Subdivision within the C&O Division. On December  
23, 2014 the Claimant, along with several other employees, were removing ballast from a section  
of track located on a bridge. While working, the Claimant stepped backward and fell off the  
bridge and into the creek below. All employees acknowledged that they had held multiple job  
briefings where it was said they were to remain within the track gauge to avoid falling or needing

fall protection. The Claimant had been using a rake to shove ballast off the track. He was in the center of the track facing the north rail when he took a step back and fell.

By letter dated January 6, 2015 the Claimant was informed of a formal investigation based on the allegations that he was in violation of the FRA bridge worker safety standards and also for failing to conduct a proper job briefing. Upon conclusion of the investigation the Claimant was found guilty of violating General Safety Rules ES-13.1, GS-3 and GS-8. The discipline assessed was time served while withheld from service pending the investigation, resulting in a thirty-six (36) 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. The Claimant states that he was within the gauge of the track at all times and that he took the safest course of action. The testimony provided that 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 it is clear from the evidence that the Claimant was working outside the track gauge when he fell and did not have fall protection. If the Claimant had been in the middle of the track as he claimed, he would not have fallen off of the bridge but rather onto the ballast or across the south rail of the bridge. Even further, the Claimant did not testify that he stumbled, tripped, or slid, but rather took a single step back and fell off the bridge. The only reasonable explanation is the Claimant was outside the rail with his back to the edge. 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:**

It is clear that the Carrier has met their burden of proof. The Claimant admits he took a step back while working on the bridge resulting in him falling into the creek below. This is a clear indication that the Claimant was not in compliance with the General Safety Rules discussed above.

**AWARD:**

The claim is denied.

  
**Roger K. MacDougall**  
**Chair and Neutral Member**

Dated: 2/17/2017

At: Chicago, IL