

**PUBLIC LAW BOARD NO. 7529
CASE NO. 89
AWARD NO. 89**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
(Organization file: D70801915 CSX))	DISPUTE
)	
vs.)	
)	
CSX TRANSPORTATION, INC.		
(Carrier file: 2015-183979)		

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 R. Lahorn 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. As a consequence of the violation, R. Lahorn 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 just under 5 years of seniority in the Carrier’s Maintenance of Way Department. During the time of the incident he was assigned and worked as a welder on the James River Subdivision within the C&O Division. On December 23, 2014, the Claimant and several other employees were removing ballast from a section of track located on a bridge. While working, an employee stepped backward and fell off the bridge into the creek below. Prior to the incident, the team of employees working held a job briefing and all employees acknowledged they were to remain within the track gauge to avoid falling or needing fall protection while working.

The Claimant received a letter dated January 6, 2015 informing him of a formal investigation of the incident alleging he was in violation of FRA bridge worker safety standards and performed an inadequate job briefing. During the investigation, all employees claimed to have been working safely and within the parameters of the operating and safety rules. They established that everyone was to remain in the center of the track while working. By letter dated February 10, 2015 the Claimant was informed that he had violated General Safety Rules ES-13.1, GS-3 and GS-8. He was assessed a discipline of a suspension of time served for a total of forty-nine (49) days.

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 protections that would be required and collectively decided the safest and most efficient course of action necessary when performing their work. 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 received 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 has no obligation to provide exhibits prior to the hearing and the hearing officer allowed the Organization to take multiple recesses to review. 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. The rule infractions committed by the Claimant are considered a major offense, for which a single infraction, if proven guilty, can result in dismissal. 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:

There is no indication by the evidence that the Claimant is in violation of the rules the Carrier claims he has violated. The mere fact that the Claimant was on the bridge at the time of the incident is not enough to show that he was in violation of the rules. This Claimant did not fall off the bridge. Another employee did. There is no evidence before this Board that the Claimant either did, or failed to do something that contributed to the accident involving the other employee. As a result, the Carrier failed to meet its burden of proof.

AWARD:

The claim is sustained.



Roger K. MacDougall
Chair and Neutral Member

Dated: _____

2/17/2017

At: Chicago, IL