

**PUBLIC LAW BOARD NO. 7529
CASE NO. 94
AWARD NO. 94**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	PARTIES TO THE
)	DISPUTE
vs.)	
)	
CSX TRANSPORTATION, INC.		
(Carrier File: 2015-18847)		

STATEMENT OF CLAIM:

“It is my desire to process the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Special Board of Adjustment No. 7529. In so electing, I understand that the Neutral Member of Special Board of Adjustment 7529 will base his decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and Rule 25 of the Maintenance of Way 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 15, 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 August 25, 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. On March 16, 2015 the Claimant was on a welding team with BR Peterson and was instructed to follow a working sperry car by traveling from crossing to crossing. They were instructed to stay approximately three miles from the car to avoid collision. The Claimant, as the passenger, ran into the back of the sperry car while operating in an area they were never instructed to go. The Claimant stated that he complied with all applicable operating rules. On March 20, 2015 the Claimant was charged with multiple rule violations. Upon review of the evidence, the Claimant was assessed a time-served suspension for violating Operating Rules 100.1, 104.3, 712.17 and 712.21.

The Organization appeals that decision to this Board.

POSITION OF THE ORGANIZATION:

The Organization says that the Claimant was merely the passenger in the vehicle. Thus, they say, he is not responsible for running into the Sperry car. Further, they say, the 39 day suspension was overly harsh given the circumstances. They say that the rail may have been wet, causing the vehicle being driven by Mr. Peterson to extend its normal stopping distance. They also say that the Sperry car was backing up, without warning.

POSITION OF THE CARRIER:

The Carrier's position is that the Claimant's due process rights as provided under Rule 25 of the Agreement were fully protected and the hearing was conducted in a fair and impartial manner. The Claimant was provided notice of the charges, provided an opportunity to cross-examine witnesses, along with the ability to present evidence and confer with his representative. The Carrier has met its burden of proof and states that the investigation established the Claimant's violation of CSX Operating Rules 100.1, 104.3, 712.17, and 712.21. In support the Carrier argues the Claimant failed to travel at a speed that would allow stopping within on-half the range of vision. The Carrier has shown substantial evidence that the Claimant's actions demonstrated carelessness and endangered life and property. It is the Carrier's position that the discipline assessed is appropriate considering the Claimant committed a Major Offense, for which a single infraction, if proven guilty, can result in dismissal. Even further, the Claimant has been disciplined in the past for carelessness and therefore, based on the Claimant's years of service, disciplinary history, the circumstances and aggravating factors, the Carrier was not harsh or excessive when it assessed a 39 day suspension of the Claimant.

RESULT:

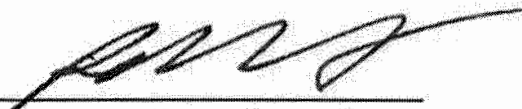
The Carrier, as this is a discipline case, has the burden of proof concerning this claim.

As to the procedural issue at hand, there is not sufficient evidence presented by the Claimant to support for the finding of an unfair and impartial hearing.

Turning to the quantum of discipline, the vehicle in which the Claimant was riding failed to stop at within half the sight distance. The Claimant did not question the speed the vehicle was traveling at. Only when he saw the Sperry vehicle did he tell the driver to stop. While he was not the driver, similar to a conductor, this passenger had a duty to tell the driver to slow down if he was going to fast. By his own comments in the investigation, he did not do so. As a result, the Carrier is able to meet their burden of proof.

AWARD:

The claim is denied.


Roger K. MacDougall
Chair and Neutral Member

Dated: 2/17/2017

At: Chicago, IL