

PUBLIC LAW BOARD NO. 7529

Award No. 95
Carrier File: 2015-189230
System File: D21002715

PARTIES

TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters
(the Organization)

and

CSX Transportation, Inc.
(the Carrier)

Arbitrator: Sherwood Malamud

Claimant: Frank A. Alexander

Decision: Claim Denied

Statement of Claim:

“It is my desire to appeal the discipline assessed to me and to obtain a decision as quickly as possible. Therefore, I hereby elect to have said discipline submitted to Public Law Board No. 7529. I understand that the Neutral Member of Public Law Board No. 7529 will base his/her decision on the transcript of my hearing, my prior service record, the notice of my hearing, the notice of discipline and the discipline rule of the Maintenance of Way Agreement.”

Findings of the Board:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Carrier disciplined Claimant for violating CSXT Operating Rules 100.1, 105.1, and CSX Safeway Rule GS-1. On the basis of that finding, the Carrier assessed discipline as follows: disqualification from the Track Inspector position for a period of one year; and the assessment of ten day overhead suspension for one year beginning May 19, 2015 and ending May 18, 2016.

Upon due notice, the Carrier conducted an on the property hearing on May 6, 2015. The Claimant was represented by the organization. Claimant Frank A. Alexander attended and participated in the hearing. On May 19, 2015, Division Engineer-Jacksonville (Florida) proposed the above mode of discipline. The Carrier assessed discipline because Claimant failed to protect mainline track at or near mile post A828.4 on the Carters Subdivision in the vicinity of Haines City, Florida.

On November 29, 2014, Claimant was called out for a track light. He discovered in the course of his inspection a center broken joint bar. He failed to issue a slow order limiting train speed on this track to 10 miles per hour. On December 3, 2014, Claimant highrailed the same area of track near mile post A 828.4 on the Carters subdivision. He inputted in the Integrated Track Inspection System (ITIS) that documents track inspection for the federal government, "no defect" on his inspection report.

The Board's review of the record establishes the following time line. Claimant's inspection of the track at or near mile post A828.4 occurred on November 29, 2014. He notified Roadmaster Thomas of his finding. The Roadmaster told Claimant that "she would take care of it." On December 1, Claimant checked and found that no slow order was placed on the track. On December 5, a slow order was placed on the track and the broken rail was replaced.

On December 11, Claimant filed a complaint with the Carrier's ethics hotline alleging that the Roadmaster and Track Foreman Glover retaliated against Claimant for reporting the extended delay in repairing the broken rail. Human Resources Manager Wainwright interviewed Claimant on December 12. Her investigation into the retaliation charge concluded on February 6/7 with a finding that the claim of retaliation was unsubstantiated.

When Assistant Division Engineer (ADE) Spivey assumed responsibility for the area in which Claimant worked, he contacted Spivey on January 9 to inquire into the status of Claimant's retaliation complaint. At this time, Claimant informed Spivey about the delay in the replacement of the broken rail, a delay stretching from November 29 to December 5, 2014.

After she concluded the retaliation complaint on February 6/7, Wainwright continued to investigate the broken rail incident. She concluded her investigation of the broken rail incident on March 9, when she issued a report to the Engineering Division. On March 16, 2015, the Carrier notified Claimant that it convened a formal investigation to determine Claimant's role and responsibility in the delay in the repair of the broken rail.

The Organization timely raised objection to the investigation at the on property May 6, 2015 hearing. The Organization argued that the charges initiated by Assistant Division Engineer Spivey on March 16, 2015 do not comport with Rule 25, 20-day time line in which Carrier management must file charges. The rule provides, in material part, at Section 1(d) that:

An employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union representative. The hearing shall be scheduled to begin within twenty (20) days from the date management had **knowledge** of the employee's involvement. . . . (emphasis added)

Rule 25, Section 3-appeal at (e) provides:

The time limits of this Rule may be extended by written agreement between the Company and the employee or his union representative. In the event the time limits are not complied with, the discipline or right of appeal shall be dropped as the case may be.

Procedural Arbitrability

The Organization maintains that on January 9, 2015 Spivey had knowledge of the incident, the failure to protect the mainline track between November 29 and December 5, 2014. The charges filed on March 16 are well beyond the 20-day time limitation established by Rule 25.

The Carrier maintains that the clock for bringing charges began with the issuance of the report by Human Resources Manager Wainwright on March 9, 2015. Within a week of the issuance of the report, ADE Spivey issued the charges which are the subject of this claim.

The Board carefully considered the Organization's procedural arbitrability defense. The record establishes by substantial evidence that the extent of Claimant's involvement and his role in the failure to protect the track during the period of November 29 through December 5, 2014 was not known to Spivey until the issuance of the March 9 report. ADE Spivey was not asked at the on property hearing, when he learned of Claimant's entry into the ITIS computer system "no defects" on December 3, 2014 at a point in when the broken rail was still in the track. There is nothing in this record to suggest that Spivey learned of this fact at any point prior to Wainwright's report which she issued on March 9, 2015. Accordingly, the Board concludes that the charges were filed within the 20-day time limit.

Hearsay

The Organization objected, both in a timely and frequent manner, at the hearing to the recitation by Human Resources Manager Wainwright of her account of her interview of Roadmaster Nekeisha Thomas and what she said to Claimant. The Carrier dismissed Thomas on March 2, 2015 and banned her from entering its property. The Organization argued that the

Roadmaster's testimony is necessary for the Carrier to sustain its burden of establishing the charge by substantial evidence.

The Board disagrees. Without reference to Wainwright's account of what Thomas said she told Claimant, but relying solely on what Claimant testified to at the hearing and his complaint concerning the incident, the Board finds that the following findings are supported by substantial evidence in the record.

Claimant notified Roadmaster Thomas of the break in the rail on November 29, 2014. She advised him that she would "take care of it." However, by his own account, Claimant checked and discovered that no orders were placed on the track, when he checked on December 1.

The ITIS report placed in evidence establishes that an entry by an individual with Claimant's ID entered "no defect" into the system in describing an inspection of this segment of the track on December 3. Claimant strenuously asserted at the on property hearing that he did not conduct an inspection on December 3, but he did so on December 2. He claimed that the ITIS system was defective. Yet, there is no evidence in the record that establishes that the computer problem would generate a report of "no defect" on the track. There is no explanation in any of the testimony provided at the hearing for the report of "no defect."

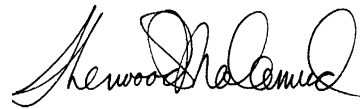
Although Claimant was the individual who brought the incident to ADE Spivey's attention, Claimant took no action of his own to protect the track until his reinspection on December 5 uncovered the continued existence of the broken rail. The rail in question is on the mainline which is traversed by Amtrak trains carrying passengers and by freight trains that transport chlorine and other chemicals at speeds that approximate 79 miles per hour. From November 29, 2014 to December 5, 2014 trains continued to operate over this segment of the track at speeds far in excess of what would be in place under a 213.9B rule of limiting speeds to 10 miles per hour.

Therefore, the Board concludes that the Carrier complied with the agreement when it brought the charges on March 16, 2015 and conducted the hearing on the property on May 6, 2015. Further, the Board concludes that substantial evidence was produced at the hearing to prove the charge that Claimant failed to protect the track in violation of Operating Rule 100.1, 105.1, and Safeway Rule GS-1. Furthermore, the Board concludes that in light of the safety hazard to the public and to Carrier employees, the disqualification for one year from the Track Inspector position and the assessment of ten days overhead for one year is appropriate and supported by the record.

AWARD:

The claim is denied.

Date: October 13, 2016

A handwritten signature in black ink, appearing to read "Sherwood Malamud". The signature is fluid and cursive, with the first name "Sherwood" and last name "Malamud" clearly distinguishable.

Sherwood Malamud
Neutral Member