

PUBLIC LAW BOARD NO. 7529

Award No. 96
Carrier File: 2015-189232
System File: D21002515

PARTIES

TO THE DISPUTE:

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

and

CSX Transportation, Inc.
(the Carrier)

Arbitrator: Sherwood Malamud

Claimant Bernard H. Glover

Decision: Claim Denied

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 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.

On May 13, 2015, the Carrier disciplined Claimant for violating CSXT Operating Rules 100.1, 104.3, and 105.1 by his conduct on December 1, 2014, in which he failed to follow Roadmaster Nekeisha Thomas’s instruction to contact the Track Inspector and correct a center

broken joint bar on the main line. On the basis of that finding, Division Engineer D. L. Moss assessed discipline in the form of a 15 calendar day actual suspension beginning Monday, May 18, 2015 and ending Monday, June 1, 2015. In addition, Moss assessed 15 days overhead suspension for one year beginning June 2, 2015 and ending June 1, 2016.

Upon due notice, the Carrier conducted an on the property hearing on April 23, 2015. The Claimant was represented by the organization. Claimant Bernard H. Glover attended and participated in the hearing.

Timeliness

The Organization timely objected to the hearing on the basis that the charges against Claimant were not timely filed-- within 20 days of the Carrier's knowledge of the conduct subject to the charge. The Organization asserted that Assistant Division Engineer Spivey knew of Claimant's conduct on January 9, 2015. Yet, the charging letter did not issue until March 16, 2015, well beyond the 20 day time frame under Rule 25 in which charges should be filed.

The Board carefully reviewed the record. It reflects that Assistant Division Engineer Spivey did not know of Glover's conduct on December 1, 2014 until Human Resources Manager Deborah Wainwright issued her report on March 9, 2015. The charges that are the subject of this appeal issued one week subsequent to the issuance of the Wainwright report. Accordingly, the Board concludes that the charges issued within the 20 day time limitation.

Hearsay and Substantial Evidence

The Organization argues that the Roadmaster did not testify at the April 23, 2015 hearing. On March 2, 2015, the Carrier dismissed Roadmaster Thomas and banned her from coming upon its property. In part, the Carrier relies on Wainwright's testimony at the on property hearing to establish that Thomas instructed Claimant to "get with" Track Inspector Alexander and repair the broken rail.

Roadmaster Thomas was the supervisor who instructed Claimant to repair the track. The Organization argues that the Carrier failed to provide substantial evidence in support of a finding that the Roadmaster identified the task and location of the broken track to be repaired in her instructions to Claimant on December 1, 2014. The Organization argues that, in the absence of direct evidence from the Roadmaster, the Board should set aside the discipline imposed and sustain the claim.

Ordinarily, the Board in reviewing the decision of the Carrier on the property does not resolve credibility disputes. However, in this case, the credibility dispute is not the hearsay testimony introduced into the record through Human Resource Manager Wainwright's testimony of her interview with the Roadmaster Thomas, but, rather, the conflicting testimony between

Claimant's statement and that of Track Inspector Alexander. Claimant stated he contacted the Track Inspector. Alexander, the Track Inspector, testified that there was no conversation between himself and Glover on December 1, 2014.

The Board gives no weight to the hearsay account of the interview between Wainwright and Roadmaster Thomas. Both Wainwright and ADE Spivey characterized the statements provided to them by Thomas as unreliable, particularly when she was describing her conduct.

The record contains Claimant's account of his conversation with Roadmaster Thomas on December 1, 2014. He indicated that the Roadmaster instructed him to "get with" speak with Track Inspector Alexander. Glover testified he contacted Alexander. The Track Inspector Alexander testified that no such conversation occurred. The record provides the basis for Carrier's decision to accept Alexander's account that no such conversation occurred on December 1, 2014.

Claimant testified that he did not know nor was he made aware of the location of the broken rail. His account limits the discussion he had with the Track Inspector on December 1 to supplies necessary to repair the rail. According to his testimony, he did not ascertain in that discussion the location of the broken rail. Furthermore, it is undisputed that no other discussion occurred between December 1 and December 5 among Claimant, the Track Inspector or the Roadmaster as to the location of the broken rail and any follow-up concerning its repair.

Claimant indicates in his testimony that, in the absence of any record of any order to protect the track, he considered the need to repair the track as a non-emergency situation. He did not realize that the track in question was on the main line; it was track traversed by passenger trains and freight trains carrying chlorine and other hazardous materials.

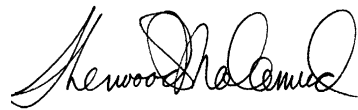
The Board concludes that the Carrier's reliance on the testimony of Track Inspector Alexander presents substantial evidence to support the charge. If the conversation had occurred, it seems unlikely that the Track Foreman, Claimant, would limit the conversation to the materials needed without finding out the location of the needed repair. The Board concludes that the Carrier had substantial evidence sufficient to find a violation of its Operating Rules 100.1, 104.3, and 105.1.

The Board does not find a basis for modification of the discipline imposed.

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