

**Brotherhood of Maintenance
of Way Employees Division**

VS.

CSX Transportation, Inc.

PARTIES TO DISPUTE

Statement of Claim:

"1. The Carrier's imposition of discipline in the form of a Timeout with a ten (10) calendar day overhead suspension for a period of one (1) year beginning September 4, 2013 upon Mr. M. Workman for the alleged violation of CSXT Operating Rules – General Rule A, Safeway Rule GS-1 and the Code of Ethics was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier's File 2013-149926).

2. "As a consequence of violation referred to in Part 1 above, Claimant M. Workman shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

"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 and Decision:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and Carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute.

M. L. Workman(Claimant), ID No 233187, a vehicle operator whose duties included operating a water truck in support of a production team. Claimant was charged in connection with an incident that occurred at approximately 0700 hours, on July 17, 2013, in the vicinity of Barr Yard, when it is alleged Claimant failed to properly and safely perform the responsibilities of his position, failed to follow instructions, failed to act in a civil and courteous manner, a violation of CSXT Operating Rules – General Rule A, CSX Safeway Rule GS-1, as well as the CSX Code of Ethics.

Following a formal hearing where evidence, testimony and documents were presented the Claimant was found guilty of violating CSX Transportation Operating Rules A and CSX Safeway General Safety Rule GS-1. In a letter dated September 4, 2013, Claimant was assessed discipline of ten (10) days overhead suspension for a period of one (1) year. Claimant thereafter filed this appeal.

This case presents an allegation that Claimant disobeyed a reasonable instruction given by his supervisor. His supervisor had previously told Claimant to obtain and store ice and water into the water truck and keep the truck near the team so that the employees did not have to travel with ice over a long distance to their work. Nonetheless, on July 17, 2013, Claimant asserts that he noticed the closeness of the ice machines and the work site, so he requested permission to alter the procedure and allow the employees to obtain their own ice on their way to start work. Claimant also stated the ice had been melting in the truck so it made sense to request this change due to the heat. Subsequently, a train arrived and blocked access to the ice machines, causing the employees to be bussed around the train to secure their ice and water.

The supervisor cited Claimant for not following his instructions requiring the availability of ice on the truck for the employees. Later Claimant confronted the supervisor on three(3) occasions questioning why he was being disciplined. The supervisor, based on Claimant's demeanor, concluded Claimant acted in an uncivil and uncourteous manner in violation of work rules.

One issue is whether Claimant was granted permission to alter the instruction regarding obtaining ice on the water truck for the production team. The record in this case supports the conclusion that Claimant reasonably believed he had permission to allow the employees to obtain their ice directly from the machine. Claimant and several witnesses corroborated this in their testimony. Moreover, the supervisor did not stop the employees from obtaining their own ice, but delayed his response by telling Claimant he would speak to him after the job briefing. Thus, the employees were allowed to follow the different procedure.

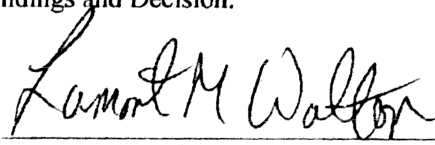
Also this situation included miscommunication. The supervisor may have granted permission to allow the employees to retrieve ice from the ice machine but still wanted Claimant to obtain and store water and ice in coolers on water truck. On the other hand, Claimant believed it was unnecessary to load the truck and have the employees directly retrieve their own ice from the ice machine. The record supports that there was miscommunication between the supervisor and Claimant. Also the record indicates there were past instances where supervisors allowed employees to obtain their own ice when the ice machine was in close proximity to the work. Claimant believed this was another time permission had been granted. Therefore, it is determined that Claimant did not intentionally or willfully act to disregard a reasonable instruction and a violation of CSX Transportation Operating Rule A cannot be sustained.

The second issue is whether Claimant confronted his supervisor inappropriately by failing to act in a "civil and courteous" manner. The record in this case is devoid of substantial evidence showing a violation of Rule GS-1 and the Code of Ethics. In the record, the supervision described that Claimant on three occasions spoke to him about the incident and being disciplined, concluding that Claimant acted "frustrated" and "agitated". The supervisor faults Claimant for not following the chain of command, but the work rule cited does not proscribe an employee from contacting a supervisor about the appropriateness of his discipline. In the record, the supervisor admits that he was the proper person for Claimant to approach. In addition, the supervisor felt Claimant had made negative statements about him to team members, however this was not substantiated in the record. No team member was called as a witness to prove this statement. The clear intent of the rule is to foster civility in the workplace. Generally a person acting "civil and courteous" implies that he was exhibiting polite conduct and showing good manner. The evidence in this case does not support a finding that Claimant acted outside the bounds of politeness or good manners when he confronted his supervisor. For this reason, it is concluded that the charge against Claimant for violating CSX Safeway Rule GS-1 and CSX Code of Ethics was not proven by substantial evidence. The Carrier's burden of proof was not met and proved that the rules were violated. Therefore, Claimant's discipline is rescinded and the appeal is sustained.

Award:

The claim and appeal is sustained, in accordance with the Findings and Decision.

May 30, 2014
Award Date


Lamont M. Walton, Referee