

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 20**

**Statement of Claim:** It is the claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day suspension] imposed upon employee E. Furgerson on May 24, 2001 was without just and sufficient cause and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, "... the charge letter of April 23, 2001, and all matter relative thereto, be removed from Mr. Furgerson's personal file, and he be made whole for all losses suffered as a result of the Carrier's actions.

**Background**

The Claimant in this case, E. Furgerson, is a welder who was assessed a 30-day suspension for leaving a track in an unsafe condition. On April 9, 2001, Claimant was in charge of a 707 Work Authority on the Aberdeen Subdivision. He was called to Milepost 233.2 to repair a misaligned and bent track, along with the T9 force. Claimant was told by the T9 foreman, Mr. Weaver, to make certain repairs on a rail joint to alleviate track buckling and to bring the width of each rail within the proper alignment or measurement. Instead of cutting each end of the rail smoothly with a saw to make a tight joint, Claimant made the cuts with a cutting torch, which left jagged and uneven ends. He then

joined the two rail ends with only two bolts rather than four in the joint. The remaining two bolt holes in the joint bar were not secured. Knowing that the repairs he had made were inadequate, Claimant requested and received a 10 mph slow order on the track in an effort to avoid a derailment. He then left the work site and went home.

Roadmaster J.D. Kirkland inspected the track the following morning and saw that the track had not been properly repaired. According to Kirkland, Claimant had not cut the rail with the correct saw and had also failed to install the joint bars with a minimum of two bolts in each end of the rail.

By letter dated April 23, 2001, Claimant was notified that a formal investigation would be held on May 7, 2001 in connection with the unsafe track condition found on April 10, 2001. Following that investigation, Claimant was assessed a 30-day suspension, by letter dated May 24, 2001. The Organization appealed the suspension, and when the matter remained unresolved, it was submitted to this Board for review.

### **Contentions of the Parties**

The Carrier contends that Claimant performed inadequate repairs to the rail and then knowingly left track in a seriously deficient condition, which was unsafe for both freight and passenger traffic. Moreover, Claimant acknowledged his responsibility in failing to use proper techniques in dealing with the track misalignment and repair. The Carrier further argues that it afforded Claimant full due process and fairly assessed discipline after making a thorough investigation of the incident. While the Organization asserts that the Carrier improperly refused to handle the matter under the Individual Development and Personal Accountability Policy (IDPAP), the Carrier submits that it adhered to the

policy because Claimant previously had received a "time-out" session in accordance with the IDPAP, and 30-day suspension was the next prescribed level of discipline.

The Organization contends that Claimant did not have the required tools to complete the assigned work on the misaligned rail because they were missing from the welder's truck. Apparently, Roadmaster Kirland had taken the tools with him to another location. After Kirkland was contacted, he called the nearest location to have the necessary equipment delivered to the site, but when it arrived, it was not usable. The Organization claims that thereafter, Claimant and Mr. Weaver discussed the situation, and Mr. Weaver said he would handle matter with the Roadmaster. However, Mr. Weaver did not do so. Given these circumstances, the Organization argues that Weaver failed to carry out his duties properly as the Foreman, and Mr. Kirkland was also derelict in his duties because he failed to furnish the resources (i.e. saw blades, rail drills, etc.) that were required to perform the work.

The Organization further contends that the Carrier failed to consider handling this case under the IDPAP. Specifically, the Organization argues that the IDPAP requires discussion between the Organization's General Chairman (or his designee) and the Carrier prior to any action under the IDPAP, and such discussion did not occur in the instant matter or on a prior occasion when Claimant allegedly had a time-out session.

### **Findings**

CSXT On-Track Worker Safety Rule 600 states, in relevant part:

Engineering Department employees must not do work that will interfere with the safe passage of trains. Work must be

done under protection and in accordance with operating rules.

CSXT Operating Rule 501, Section 6 states, in relevant part:

...Employees must not endanger life or property.

Federal Railroad Administration Track Safety Standard 213.121, Section (e) provides:

In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.

The Record below clearly indicates that Claimant violated these rules. During the investigation, he conceded that he failed to use correct methods and tools to perform the track repairs. Moreover, he indicated that he knew the proper procedures that should have been utilized. In fact, he testified that the joint bars in question should have been sawed at each end, with two bolt holes drilled on each said of the rail and with four bolts placed on each joint.

Claimant's defense was that he lacked the proper saw to do the work. If that were the case, however, he should have taken the track out of service. Instead he went home knowing that he left unsafe track. The fact that he requested a 10 mph slow order on the track did not resolve the problem. The track was dangerous and potentially lethal inasmuch as six trains passed over this section during the night of April 9<sup>th</sup>. If Claimant could not properly make the assigned repairs with the equipment he had, he should have told his Foreman before he left the site, and he should have taken the track out of service.

As to the Organization's claim that the Carrier ignored the Individual Development and Personal Accountability Policy, the Record indicates otherwise. The IDPAP prescribes that for minor offenses, the Carrier's General Manager, or his designee, will

meet with the General Chairman involved, or his designee, and determine the corrective action to be taken to improve individual performance. In this case, however, Claimant committed a serious violation. Furthermore, it was his second serious violation in regard to welding work. The IDPAP states that for the *first serious* violation committed by an employee covered by the policy, two options are available. Under Option A, within three days of knowledge of a violation, the employee will be offered an opportunity to participate in the "Time Out" process conducted by the General Manager or his designee. Option B provides for customary handling under the Railway Labor Act and the applicable collective Bargaining Agreement. The Record reveals that Claimant already received a time out in conjunction with a prior charge. The April 9, 2001 incident was his second serious offense for which the IDPAP outlines the prescribed procedure:

For the second serious offense within three years a minimum of 30 days actual suspension will be assessed.

With respect to serious offenses, reference to consultation with the General Chairman is in the following IDPAP provision:

At the discretion of the General Manager, with the consultation of the General Chairman, the employee may be offered the opportunity to use "positive corrective action"... for up to one-half of the time actually suspended.

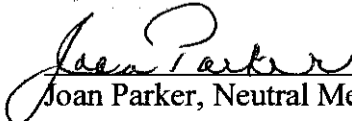
Thus, the language of the IDPAP does not mandate a discussion with the Organization prior to the imposition of the 30-day suspension. Rather, it gives the General Manager the discretion to consult with the General Chairman after discipline has been imposed for the purpose of offering positive corrective action for a portion of the time actually suspended.

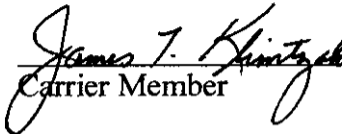
The Organization's claim that IDPAP was violated because the Carrier failed to hold joint discussions prior to imposing the 30-day suspension is without merit. The Carrier adhered strictly to the IDPAP.

Claimant had the benefit of a full and fair hearing. As illustrated by his own testimony, he knowingly performed work in an unsafe manner and left track in a deficient condition, which could have had disastrous results. The discipline imposed was not unreasonable.

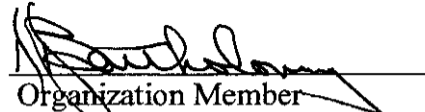
**Award**

The claim is denied.

  
Joan Parker, Neutral Member

  
Carrier Member

Dated: May 10, 2004

  
Organization Member

Dated: 5-10-04