

PUBLIC LAW BOARD NO. 6564

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE**

And

CSX TRANSPORTATION, INC.

Case No. 49

* * * *

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The discipline (30 days' actual suspension from May 6 through June 6, 2004) imposed upon Mr. D. R. Sanders for alleged violation Of CSXT On-Track Workers Rules 720 and 727(3) and CSXT Safe Way Rule E/M-13(e) in connection with an incident on May 5, 2004 near Bartow, Florida in which the Ballast regular he was operating struck the rear of the mark III Tamper was arbitrary, capricious, unwarranted and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Mr. D. R. Sanders shall now have the discipline removed from his personal Record and he shall be compensated for all lost time.

Facts

On May 5, 2004, Claimant D. R. Sanders was operating a ballast regulator at Milepost SV 846.7 on the Valrico subdivision, near Bartow, Florida. Ahead of Claimant, employee J. R. Walker was operating a Mark III tamper. While en route, the crew received 706 authority, and as Claimant wrote down the authority numbers, his attention was momentarily diverted away from the operation of the ballast regulator. When he

redirected his attention back to the operation of his equipment, he realized that employee Walker had stopped the Mark III tamper, and a rear-end collision occurred. As a result of the accident, the Mark III tamper was rendered inoperable.

Following an investigation, which was held on May 25, 2004, Claimant was found guilty of violating CSXT On-Track Workers Rules 720 and 727(3) and CSXT Safe Way Rule E/M-13(e), and he was assessed a thirty (30) day actual suspension. Those rules state, in relevant part:

720. On-track equipment must move prepared to stop within one-half the range of vision. It must not exceed the speed authorized for trains on the same track....

727.3 Traveling Machinery

A minimum spacing of 200 feet will be maintained while in the travel mode. "Bunching" for movements over road crossings, movable structures and control points can be done after a proper job briefing established procedure. The spacing between machines will be 40 feet minimum during such movements.

E/M-13 Mechanical Equipment

Departmental safety rules:

Operator must:

- e. Stop equipment when the operator's attention cannot be directed exclusively to controlling the movement.

By letter dated June 15, 2004, the Organization appealed the discipline. The appeal was processed through the contractual grievance procedure and was discussed in conference. A resolution was not reached, however, and the dispute now comes before this Board for adjudication.

Contentions of the Parties

The Carrier contends that Claimant was afforded a fair and impartial hearing during which it fulfilled its burden of producing substantial evidence of Claimant's guilt.

Claimant admitted that he rear-ended the Mark III tamper. Therefore, there is no doubt as to how the collision occurred. In the Carrier's view, Claimant, as an employee, with more than 32 years of experience, understood the importance of paying close attention to the operation of the ballast regulator. He became distracted and, as a result, caused significant damage to CSXT property and risked injuring a co-worker.

Given the seriousness of the accident, the Carrier submits that Claimant's 30-day suspension was the appropriate penalty.

The Organization does not deny Claimant's involvement in the accident, but it argues that the discipline assessed was excessive given that Claimant had rendered almost 33 years of service without any prior incident. Moreover, the testimony revealed that tamper operator Walker stopped his machine without telling Claimant he was doing so, and the brake or stop lights on the tamper were not working.

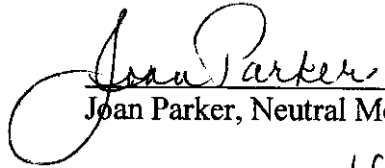
The Organization concedes that Claimant's attention was momentarily drawn away from the tamper as he was writing a note regarding authority to enter another employee's work location. The Organization asserts, however, that the practice had been to make notes of any changes that might affect the movement of the machines or change the planned work activity.

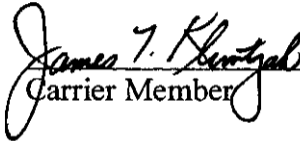
In the Organization's view, responsibility for the incident was shared. The Carrier should have made sure that all safety mechanisms (brake lights) were working, and the tamper operator should have advised Claimant that he was stopping. In these circumstances, the imposition of a 30-day suspension on Claimant was unduly harsh and should be set aside.

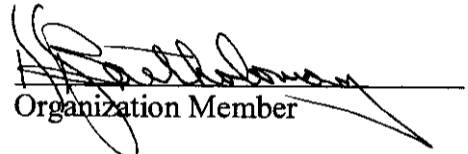
A regrettable incident occurred. But based on the mitigating circumstances, as well as Claimant's excellent record over 32 years of service, the discipline assessed was excessive. The suspension is hereby reduced to 15 calendar days.

Award

The claim is partly sustained. Claimant's suspension is hereby reduced to fifteen (15) calendar days. His record and pay shall be adjusted accordingly.


Joan Parker, Neutral Member


Carrier Member
Dated: October 6, 2006


Organization Member
Dated: 10-6-06