

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

And

CSX TRANSPORTATION, INC.

Case No. 50

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

1. The discipline (thirty (30) days' actual suspension served from April 19 through May 18, 2004) imposed under date of May 20, 2004 upon Mr. R. C. Valentine for alleged violation of CSX On-Track Worker Rules 600, 704 and 704-6(f) in connection with a 704 Track Authority incident on the Miami Subdivision on April 18, 2004 was arbitrary, capricious, on the basis of unwarranted and unproven charges in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, the discipline shall now be removed for [sic] Mr. R. C. Valentine's personal record and he shall be compensated for all lost time.

Facts

The facts in this case are largely undisputed. At the time in question, Claimant R.C. Valentine, with seniority dating from October 20, 1997, was the incumbent of a Track Inspector position headquartered at West Palm Beach, Florida. He worked Sunday

through Thursday, 9:00 a.m. – 5:30 p.m., and was responsible for inspecting track between Yamoto Road and Fort Lauderdale Station on the Miami Subdivision.

M. K. Stahl was also assigned to a Track Inspector position, headquartered in Dwyer, Florida, on the Miami Subdivision with responsibility for inspecting track between the south end of Dwyer and Yamoto Road.

On Sunday, April 18, 2004, Track Inspector Stahl's hi-rail inspection truck was in the shop for repairs. Therefore, he was directed to join Claimant Valentine in his truck that day for hi-rail inspection of track on their respective territories. The inspection started south of Dwyer on territory assigned to Stahl, and southward movement on #1 main track was covered under track authority issued to him by the Train Dispatcher pursuant to Rule 704. At approximately 10:50 a.m., Stahl told the Train Dispatcher to release the track protection block he and Claimant had traversed, as the track authority required. However, this was a mistake because Stahl erroneously believed that he and Claimant were south of control point Coconut when they were not.

After contacting the Train Dispatcher, Stahl and Claimant continued to occupy #1 main track about three miles north of Coconut without any on-track protection. In the meantime, based on Stahl's reported information, the Train Dispatcher lined a northbound commuter train from track #2 main line to #1 main track at Coconut--the same track occupied by Stahl and Claimant. Fortunately, Stahl and Valentine saw the northbound commuter train coming in the same track block on #1 main line track, and they contacted the commuter train to stop its further advancement.

As a result of this incident, both Stahl and Claimant were individually charged with violation of CSX On-Track Worker Rules 600, 704, and 704-6(f). The notice of hearing that was sent to Claimant stated as follows, in relevant part:

You are instructed to attend a formal investigation...in connection with a 704 track authority incident you were involved in on April 18, 2004, whereby you incorrectly reported to the Train Dispatcher that your hi-rail vehicle had passed by and was south of the NAS Coconut on the number one main track. After reporting this, you were still occupying the number one main track north of Coconut without any type of on-track protection and using this information, the Train Dispatcher lined a northbound P68218 commuter train from track two to track one at Coconut. (Car. Ex. A)

By letter dated May 20, 2004, Claimant was found guilty as charged and assessed a thirty (30) day actual suspension. The Organization appealed, contending that responsibility for the incident rested exclusively with Mr. Stahl because he held the track authority and was the designated employee-in-charge.

The parties exchanged correspondence and discussed the matter in conference, but were unable to reach a mutually satisfactory resolution. The appeal, therefore, now comes before this Board for adjudication.

Contentions of the Carrier

The Carrier contends that Claimant was properly disciplined for his role in incident. While Stahl was the employee-in-charge who contacted the Train Dispatcher and incorrectly released his track authority because he thought he had passed control point Coconut, Claimant was not blameless. In this regard, the Carrier emphasizes that at hearing, Claimant admitted that although he had a copy of the Superintendent's Bulletin showing the new locations of the control points, he did not review the document on the morning of April 18. Rather, he focused his attention on only those portions relevant to

the #1 main track. Both the charge and the finding, however, were incorrect. Claimant never spoke to the Train Dispatcher; nor did he tell the Train Dispatcher to release his track protection. That major mistake was made solely by Inspector Stahl, and to the extent that the Carrier disciplined Claimant for that offense, the Carrier erred, and a reduction in penalty is warranted.

Claimant, however, was not blameless in the incident. While he and Stahl agreed between themselves that each would be responsible for inspecting his regular territory, they *both* were responsible for safely completing the assignment that they jointly performed. Rules 600, 704-6(c) and 704-6(f) did not pertain solely to the employee-in-charge. Claimant, like Stahl, was a Track Department employee who was assigned to track inspection work on April 18. Thus, he was at all times required to adhere to the applicable operating rules and, as the hi-rail driver, to be mindful of all safety implications in connection with the movement of his vehicle on live track under the track authority held by Stahl.

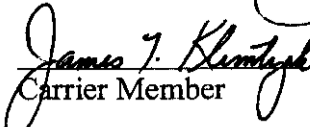
Both Stahl and Claimant were required by Operating Rule 704-6(c) to conduct a job briefing at each control point. Moreover, the control points were clearly marked on the signal bungalows along the right of way, and Claimant, therefore, should have seen them. By his own admission, Claimant did not review the Superintendent's Bulletin showing the new control points on the Dwyer-Coconut stretch of track because he limited his attention to just those portions relevant to his area of responsibility. This was a mistake because he needed to know where he was at all times and to avoid performing work that might interfere with the safe passage of trains.

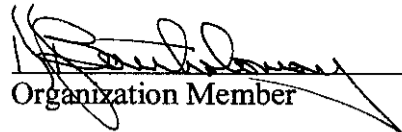
Based upon the foregoing analysis, the Carrier erred in charging Claimant with incorrectly reporting his location and seeking the release of 704 track authority. But Claimant was partly responsible for the serious mistake that left the hi-rail he was operating on a live track without protection. His suspension is hereby reduced to fifteen (15) actual days, and he shall be made whole for the time that he was improperly suspended.

Award

The claim is partly sustained. The Carrier did not have just cause to assess Claimant Valentine a thirty (30) day actual suspension. That suspension is hereby reduced to fifteen (15) actual days.


Joan Parker, Neutral Member


Carrier Member
Dated: October 6, 2004


Organization Member
Dated: 10-6-06