

PUBLIC LAW BOARD NO. 6564

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

and

CSX TRANSPORTATION, INC.

Case No. 63

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Statement of Claim: Appeal of a thirty-day actual suspension assessed to employee B.P. Mackey, as a result of a hearing held on August 9, 2005 in Atlanta, Georgia.

Background:

Claimant B.P. Mackey, an employee holding seniority from July 27, 1999, was working as track foreman on the Atlanta Terminal Subdivision at Emory, Georgia in July 2005.¹ On July 25, Claimant was assigned to provide protection for two employees of a private contractor (Utico) who were operating a brush cutter. Claimant, as employee in charge (EIC), was responsible for getting track time by obtaining 704 authority (permission to occupy track from signal to signal for a certain amount of time) from the dispatcher. He was also responsible for ensuring that the contractor's employees stayed within the limits of the 704 authority he obtained. Claimant obtained an authority that ended at the north end signal on the main track. The brush cutters worked almost up to the signal. After releasing authority on the main track to allow two trains to pass, Claimant called the dispatcher to get 704 authority to finish the work south to the signal and asked the dispatcher to line the switch for the main track. The dispatcher complied,

¹ All dates hereafter are 2005 unless otherwise stated.

and Claimant held a job briefing with the two contractor's employees. Claimant then called the dispatcher for an authority to go past the north end signal to the next signal-to-signal segment. In the meantime, however, without Claimant's knowledge, the cutter operator had already gone about a thousand feet beyond the signal that was the limit of Claimant's current work authority.

Claimant was charged with violating Operating Rule 704.5.h ("Do not: (1) Occupy any track(s) other than the track(s) the authority is issued for"), one of five "Life-Critical" rules for which a first violation is disciplined with a thirty-day suspension.

Findings:

The Union asserts that Claimant did nothing wrong, and that it was not Claimant but the contractor's employees who violated Rule 704.5.h(1). Claimant held job briefings to ensure that the employees—who initialed the job briefing forms—understood the limits of the work authority Claimant held. The employees themselves indicated that they understood where the limits were, stating to supervisors investigating the incident that the cutter operator "pass[ed] the signal by mistake[,] went to[o] far out [of] the limit." According to the Union, Claimant performed his responsibilities "by the book," and therefore should not have been disciplined.

It is clear, based upon the record in the instant case, that without Claimant's instruction or knowledge, the contractor's employees went beyond the signal that was the limit of Claimant's 704 work authority. It is undisputed that Claimant properly held job briefings to communicate to the employees exactly where the 704 authority limits were. The Board finds, however, that while the contractor's employees must take some blame for the incident, Claimant is not blameless. Claimant's assignment was to provide

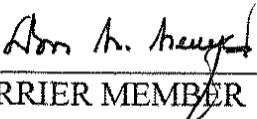
protection for the brush cutting operation. In order to do this, it was incumbent on Claimant to keep track of exactly where the employees and equipment were at all times. Testifying at the investigation, Claimant admitted that while he was in his truck on the phone with the dispatcher, he could not see the brush cutter. Claimant stated:

[T]hey say well ... why weren't [you] watch[ing] the machine, well I was sitting in the truck eating my lunch and ... there was no way in [the] world that I was going to be down there in the track in his red zone on [his] blind side or in his cutting zone and I explained that [to an investigating supervisor] and he said okay, I don't blame you.

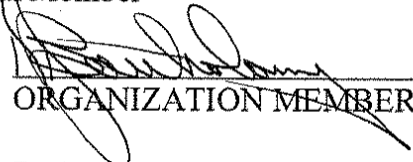
Nevertheless, Claimant should have found some way to keep the brush cutter in view, by either positioning his truck so that he could see, or getting out of the truck to watch where the brush cutter went while he was on the phone with the dispatcher and eating his lunch. The Board therefore finds that discipline was appropriate in the instant case. However, the Board also finds that in light of the contractor's employees' independent decision to cut brush past the signal, Claimant is not fully responsible for the violation, and should not have received a full measure of discipline as if he were. Therefore, Claimant's suspension will be reduced to fifteen days.

Award:

The claim is sustained in part. The thirty-day suspension imposed on Claimant shall be reduced to fifteen days.


CARRIER MEMBER
DATED: April 23, 2007


JOAN PARKER, Neutral Member


ORGANIZATION MEMBER
DATED: _____