

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

- and -

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

...appeal of discipline assessed [dismissal] to employee M. L. White ID#*****, as a result of the hearing held on March 13, 2006.....

...it is respectfully [sic] that the charge letter and all matters relative thereto be removed from Mr. White's personal file and he be returned to the employment of CSX Transportation, and be made whole for all losses suffered as a result of the Carrier's action.

OPINION OF THE BOARD:

M.L. White (hereinafter referred to as "Claimant") was hired by a CSXT predecessor, the former Louisville and Nashville Railroad Company, in the Maintenance of Way Track Department on May 1, 1978. At all times relevant to this issue, the Claimant was a Trackman, assigned to service Lane Gang 5LAJ ("the gang"). In addition to Claimant, and pertinent to this dispute, the gang also included Foreman Armenta and backhoe Machine Operator Carby.

On February 8, 2006, the gang was assigned to track maintenance on the LCL Subdivision, at milepost 00T 16.8, Peewee Valley, KY. At approximately 1200 hours, Foreman Armenta directed the gang to "vacate the track" in order to allow a train to travel through the work area. Of

note, in order to clear the track it was necessary to remove a power unit by using a backhoe to lift the machine from the track. The record demonstrates that the Claimant placed his hand on the power unit, hooked the chain, and then instructed Backhoe Operator Carby to "lift the power unit". When Mr. Carby did as he was instructed, the backhoe bucket came down on the Claimant's hand, causing an injury. Following the incident, the Claimant was transported to a nearby hospital to receive medical attention for same.

Shortly after the Claimant left the scene for the hospital, Assistant Roadmasters Connor and Garrett investigated the incident, conducting a re-enactment. According to Messrs. Connor and Garrett, the re-enactment, conducted "immediately" following the incident, revealed that the Claimant "failed to engage in a job briefing or re-briefing; placed his hand in a pinch point; failed to attach and use a tag line to control the load; and, entered the Red Zone since no tag line was attached".

As a result of the accident, the Claimant was charged with: "Failure to work in a safe and efficient manner, in possible violation of CSX Safety Rules G-3, GS-7, ES-11 and CSXT Operating Rules 700 and 727". The investigation was held on March 13, 2006, with both Claimant and his representative in attendance. Thereafter, Carrier informed the Claimant that he had been found guilty of the charge(s), and, in "evaluating his prior work record" and "consistent with CSX Transportation's policy of supporting the use of progressive discipline" the Claimant was dismissed from service, effective March 31, 2006.

In a letter dated April 6, 2006, BMW Vice Chairman A. Shelton appealed Carrier's decision premised upon "numerous objections" at the hearing. The Vice Chairman made note of the Claimant's twenty-eight (28) year tenure, opining: "*We feel that the discipline of dismissal is very*

harsh, and Mr. White is being treated very unfairly". Director Labor Relations J. Wilson confirmed the Parties' July 11, 2006 conference, reiterating the "propriety" of the investigation proceedings.

Director Wilson further maintained that "*the fully developed record established guilt for which dismissal is appropriate*". Vice Chairman Shelton rejected the appellate declination in a letter dated October 6, 2006, in which he asserted that "*the Organization was not permitted to review relevant management records for the purpose of researching issues prior to the investigation...*".

When it became apparent that the Parties were unable to resolve the issue, it was placed before this Board for resolution.

It is the Carrier's position that a fair and impartial investigation was conducted on March 13, 2006, and the Claimant's due process rights were preserved throughout the disciplinary process. Regarding the merits of the dispute, the Carrier maintains that the Claimant's guilt was proven, and the discipline of dismissal from service was "just and warranted".

At the outset, the Organization appealed Carrier's decision premised upon its' "numerous objections" at the hearing, which Carrier allegedly failed to address. However, the record demonstrates that the Hearing Officer properly addressed each of the objections raised by the Organization at the March 13, 2006 hearing, rendering the Organization's objections moot in that regard.

Regarding the merits of the dispute, Claimant White's account of the February 8, 2006 incident was substantially the same as the reports provided by Assistant Roadmasters Conner and Garrett. In fact, the Claimant confirmed that the re-enactment conducted by Messrs. Conner and Garrett "correctly depicted the incident". (Of note, however, the Claimant took exception to whether or not the machine was "positioned above his knees".)

While the Claimant asserted that, on February 8, 2006, he performed his duties in a safe manner, the record evidence, including the Claimant's own testimony, demonstrates otherwise. Specifically, with regard to Safety Rule GS-3 and Operating Rule 700, which require job briefing and re-briefing prior to commencement of a task, the Claimant stated: "No, we didn't". Concerning Safety Rule GS-7, "Avoid placing any part of your hand or body where it can be pinched", in response to the Hearing Officer's inquiry: "Was your hand in a pinch point between the backhoe bucket and the piece of equipment?", the Claimant responded; "Yes". And when he was asked: "Did you, in fact, use a tag line?" (in accordance with Safety Rule ES-11) the Claimant admitted that: "There was no tag line on the truck". Finally, with respect to Operating Rule 727, "Roadway workers must not enter a machines' Red Zone without first communicating with the operator to establish safe work procedures", the Claimant asserted that he had "previously communicated" with Backhoe Operator Carby, admitting however, that his communication was "deficient" given the fact that the injury occurred. The record clearly demonstrates that the February 8, 2006 incident, and resulting injury, could have been avoided had Claimant White properly complied with the applicable Safety and Operating rules noted supra.

With regard to Carrier's decision to assess the discharge penalty for the Claimant's proven culpability in this incident, the Claimant's record reveals the following prior discipline history:

Five days suspension assessed following an investigation held on 1/25/89 for an undisclosed infraction.

Dismissal from service account misuse of Corporate Lodging Card on 6/7/93. Dismissal was reduced when White was returned to service on 4/7/94 without pay for time served.

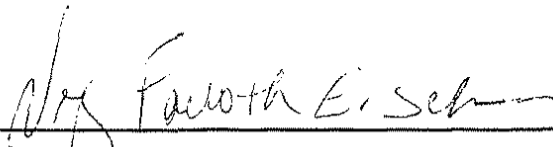
An uncontested 15 days actual suspension for violation of General Rules GR-1 and GR-2 on 1/10/05.

30 days suspension assessed 4/9/05 for unexcused absence (3/10/05) in connection with 3/28/05 charges.

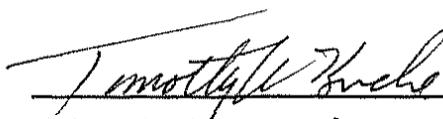
Given the record evidence, including the serious nature of this safety violation, Claimant's own incriminating testimony and his less than admirable prior service/discipline record, Carrier's decision to dismiss the Claimant cannot be considered unreasonable, unduly harsh or otherwise inappropriate. Therefore, this claim must be denied

AWARD

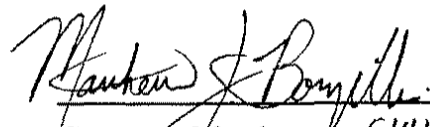
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member June 4, 2008



Company Member 6/4/2008