

**PUBLIC LAW BOARD NO. 7008**

**PARTIES TO THE DISPUTE:**

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION AFFILIATED WITH THE  
TEAMSTERS RAIL CONFERENCE

- and -

CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement, the following will serve as our appeal of discipline assessed to BMWED employee A.E. Solomon ID#\*\*\*\*\*, as a result of the hearing held on March 14, 2006, at 11492 Bluegrass Parkway, Louisville, KY.

\* \* \* \* \*

For reasons stated, as well as our numerous objections at the hearing, it is respectfully [requested] (sic) that the charge letter and all matters relative thereto be removed from Mr. Solomon's personal file, and he be made whole for all losses suffered as a result of Carrier's action.

**OPINION OF THE BOARD:**

Bridge Mechanic A.E. Solomon ("Claimant" or "Solomon") was hired in the CSXT Bridge and Building Subdepartment ("B&B") of the Engineering Department on January 15, 2001. At all times relevant to this issue, the Claimant was assigned to Midwest North Service Lane Bridge Mechanic Position 6PP3-074. On January 19, 2005, Bridge Team 6PP3 was working on the construction of a bridge at milepost OHR 72.8 near Clover Point, KY. At the end of the crews' shift (approximately 1524 hours) the Claimant was standing on a 2x4 strut beam on the northeast corner of the bridge, where the crew was using their Little Giant Crane to collect machinery and tools which

had been used throughout the workday. Of note, prior to the onset of the collection, the crane operator sounds an alarm to alert any employees that they may be in the "red zone" (the area in which the crane would be operating). As a result of Claimant's precarious position on the strut beam, while trying to leave the restricted red zone, Solomon lost his balance and grabbed the rail with his hands. As the crane progressed, the wheels of the crane ran over the Claimant's hand, causing an injury.

Thereafter, on February 1, 2006, the Claimant was instructed to attend a February 15, 2006 formal investigation regarding his failure to vacate the track on January 19, and the resulting injury. Specifically, the Claimant was charged with: *"...failure to perform your assigned duties in a safe and efficient manner and failure to follow instructions in possible violation of the Safety Policy Statement and CSX Safety Rules GS-8, GS-10, and the Code of Federal Regulations part 214.313 (b) and 214.335 (b)"*. The charge letter also informed the Claimant that the January 19 incident was considered a "Serious Offense" under the Engineering Department's Individual Development and Personal Accountability Policy ("IDPAP"). Therefore, under the IDPAP, the Claimant was offered a "Time Out Session" and "Overhead Suspension" in lieu of proceeding to the February 15 formal investigation. However, the Claimant did not accept that waiver offer.

Following two (2) postponements at the Organization's request, the hearing convened on March 22, 2006, with Claimant Solomon and his representative in attendance throughout the proceedings. By letter dated April 10, 2006, the Carrier informed Mr. Solomon that he had been found guilty as charged, and assessed a thirty (30) day actual suspension. The Organization's Vice Chairman A. Shelton appealed the discipline to Carrier's former highest officer, Director Labor Relations J. Wilson, in a letter dated April 13, 2006. In that correspondence, the Vice Chairman

opined that: *"Mr. Solomon is a diligent and hard working employee, and we feel that Mr. Solomon is being treated very unfairly"*. Mr. Shelton further stated that any procedural objections expressed at the hearing were thereby incorporated into the appeal.

In an August 9, 2006 declination of the claim, Carrier confirmed the parties' conference. Initially, Carrier noted that all of the Claimant's due process rights as provided under Discipline Rule 25 of the BMW/CSXT System Agreement, were fully protected. Carrier went on to assert that it had produced "sufficient evidence" which demonstrated that the Claimant was guilty as charged. Specifically, Director Labor Relations Director Wilson stated that: "Mr. Solomon's testimony indicates that he heard the initial sound from Crane Operator Reynolds when he sounded his horn, and he was aware the crane was coming...he acknowledged that he made 'no effort' to move away from the track at that point, but finished the last spot he was working on. When he did make the decision to move off the strut he was standing on, he lost his balance and fell." Given the circumstances, the discipline assessed was "fully justified", according to the Carrier.

In a letter dated October 9, 2006, the Organization rejected Carrier's appellate declination, arguing that: *"This is not a fair and impartial hearing based on the fact that the Organization is not permitted to review relevant management records for the purposes of researching issues related to enforcing the collective bargaining agreement in accordance with Rule 24[i] of the Agreement...."*. The Vice Chairman further noted that: *"...the Carrier states that Mr. Solomon failed to get himself in the clear after being informed. The fact is that Mr. Solomon was in the clear, but slipped and fell in the path of the crane...It has been stated all through the transcript that Mr. Solomon was in the clear well before the crane approached, but slipped and fell into the path of the crane. The Carrier knows that this was merely an unfortunate accident, but fails to acknowledge that fact"*. When the

Parties were unable to resolve the dispute, it was placed before this Board for resolution.

The record evidence demonstrates that all of the Claimant's due process rights as provided for under Rule 25 of the Agreement between the Parties were honored throughout the proceedings.. In that connection, the Organization argued that Carrier failed to provide pertinent information prior to the investigation, asserting that Carrier's failure to provide same violated Rule 24[i] of the Agreement. However, there is no provision in Agreement Rule 24[i], or any other Agreement rule which requires the "right of discovery". Therefore, in that regard we find no violation of the Agreement.

The Organization further argued that in leveling the charges against the Claimant the Carrier relied on a re-enactment conducted by individuals who didn't observe the January 19<sup>th</sup> incident; and, the Claimant was not present for the re-enactment. However, the record evidence supports Carrier's contention that the re-enactment was properly conducted. Specifically, Manager Bridges Bridge Supervisor B. Stepp went "immediately" to the site of the accident and conducted a "thorough" job briefing with Claimant's crew. The record further demonstrates that the Claimant was not present for the re-enactment because he was at a local hospital having his injury attended to and was therefore not available to be involved in, or observe, Supervisor Stepps' investigation/re-enactment of the incident.

Turning to the merits of the dispute, the Claimant was charged with violating the Safety Policy Statement and CSX Safety Rules GS-8, GS-10, and the Code of Federal Regulations part(s) 214.313(b) and 214.335(b). Those Rules state, in pertinent part:

GS-8 Protection Against Slips, Trips and Falls-Constant awareness and concentration are your best protection against slip, trip and fall hazards, both on and off the job. Always pay attention to what you are doing and where you are going.

With respect to this dispute, GS-8 specifies that:

- \* To ensure proper footing, when possible use designated walkways that are clear of debris, tools, equipment and material.
- \* Look in the direction you are walking; stop if you have to look elsewhere.
- \* Do not take a step unless you have a clear view of where you intend to place your foot.
- \* When placing your foot on any surface, do so in a defensive manner.
- \* Avoid placing your foot in any place or against any object that will cause you to trip.
- \* Avoid slippery, unstable, or uneven surfaces whenever possible; if you have to work on these surfaces, slow down and take short steps.

GS-10 - On or About the Tracks - specifies that:

- \* Be alert for and keep clear of the movement of cars, locomotives or equipment at any time, in either direction, on any track.
- \* Do not cross within 25 feet of the end of standing cars, equipment, or locomotives, except when proper protection is provided.
- \* Stop and look in both directions before making any of the following movements:
  - Fouling or crossing a track.
  - Moving from under or between equipment.

- Getting on or off equipment.

Code of Federal Regulations part 214.313(b) states that: "A roadway worker shall not foul a track except when necessary for the performance of a duty"; and, part 214.335(b) stipulates: "No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on-track safety is provided..


Careful review of the record shows that the Carrier demonstrated, with substantial evidence, that Claimant Solomon was guilty of violating CSXT Safeway Rules GS-8 and GS-10, as well as Code of Federal Regulations part 214.313(b) and 214.335(b) when he failed to stop the work he was doing on January 19, 2006 and move out of the red zone prior to the Little Giant Crane entering the work area. In fact, during his testimony at the investigation the Claimant admitted that he continued to work on the last spot in which he was working, though he heard the horn of the crane as it was approaching. Specifically, the Claimant admitted to the following:

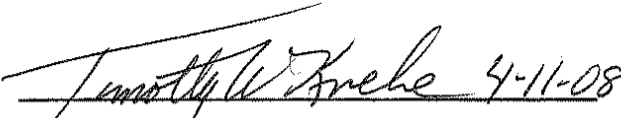
- Q. When you heard the horn blow, how long was it before you made your attempt to move away from the track?
- A. I finished the last spot that I was working on. I looked up again and I saw that it (the crane) was approaching. And then I made the decision that I could potentially be hit, and we are taught to take the safest course. That being, I decided to go ahead and move off the strut-that I would be finished at that time. And that's when I momentarily lost my balance.
- Q. So when you initially heard the horn blow, you did not make an effort to move away from the track at that point, is that correct?
- A. Correct. No, not at that time.

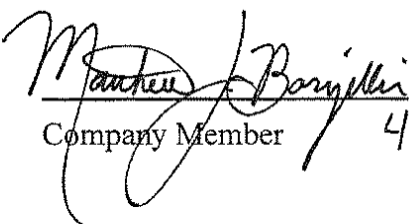
Such admission of guilt by the Claimant clearly satisfied the Carrier's burden of producing substantial evidence to support the charges.. Therefore, the only question remaining before this Board is whether the level of discipline assessed was unreasonable in all of the facts and circumstances. Given the Claimant's admission of wrongdoing, the severity of the safety violation offense and the possible disastrous consequences, the thirty (30) day actual suspension cannot be considered unduly harsh or inappropriate. Consequently, this claim must be denied.

AWARD

Claim denied.

  
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Nancy Faircloth Eischen, Chair

 4-11-08  
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Union Member

 4-11-2008  
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Company Member