

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 BMW employee K. M. Pritchett ID#*****, as a result of the hearing held on October 23, 2006 at Birmingham, AL. It will be noted that the filing of this appeal does not limit the employee's right to any alternative resolution, including expedited handling, should he so choose.

For the reasons stated, plus the objections raised at the hearing, the charge letter and all matter relative thereto should be removed from Mr. Pritchett's personal record file and Mr. Pritchett should be made for all losses suffered.

OPINION OF THE BOARD:

Machine Operator K.M. Pritchett ("Claimant") was hired by the former Seaboard System Railroad Company (predecessor property of CSXT) on February 10, 1981. At the time this issue arose, the Claimant was assigned as a Spike Driver Operator on System Production Gang ("team" or "gang") 5XT1. On October 4, 2006, Claimant's gang was working near Athens, AL performing resurfacing tasks. At approximately 1515 hours, Claimant, who was working as the second (2nd) operator on Spike Driver Machine Number four (4), failed to see Spike Driver Number three (3)

come to a stop, and collided with Machine 3, causing approximately \$800.00 worth of damage to both Spike Drivers 3 and 4.

As a result of Claimant's "failure to pay attention", he was instructed to attend an October 23, 2006 formal investigation, on the following charges: *"In connection with the above (October 4, 2006) incident, you are charged with failure to properly and safely perform your duties, carelessness, reckless operation, and failure to control your machine, and possible violations of, but not limited to, CSXT Operating Rules GR-2, 720, and 727, CSX Safeway Rules GR-3 and ES-15"*. The investigation was convened as scheduled with the Claimant and his representative in attendance. Thereafter, in an October 19, 2006 letter, Carrier informed the Claimant that he had been found guilty of the charges, noted *supra*, and assessed a forty-five (45) days actual suspension.

BMW Vice Chairman Smith appealed the discipline, alleging, at the outset: *"Rule 25 recognizes the Carrier's right to withhold an employee from service pending charges and hearing when a major offense has been committed and such employee is suspected to be guilty thereof. In such cases, the employee withheld will be given written confirmation. First, our contention is that the incident was not a major offense....[s]econd, the Carrier has had the practice of using the charge letter as the written confirmation that the employee is being withheld, which we do not concede as meeting the Carrier's obligation under Rule 25"*.

Regarding the merits of the dispute, the Vice Chairman argued that: *"For spiking of ties the gang has four (4) spike driving machines. The 'normal' crew of each spike driving machine consists of 3 employees. 2 of the employees drive spikes (one employee on each side of the machine) and the 3rd employee keeps the spike trays loaded with spikes on each spike driving machine. On the date of the incident, the machine to which the Claimant was assigned had no employee for the purpose*

of keeping the spike trays loaded. Hence, the Claimant had the additional duty of loading the spike trays. Typically, the machine is indexed, or moved, over a crosstie where the tie nippers are lowered to grab the tie and pull it up against the base of the rail, then the spikes are driven into the tie, the nippers released and the machine is indexed ahead to the next tie. The incident occurred while the machine was being moved ahead to the next tie. Assuming, arguendo, that Carrier will contend that both employees share responsibility in preventing one machine from coming into contact with another, the operator's view is severely restricted, the Carrier should have an additional employee (3rd man) on the machine to help watch out for possible collision while the machine is being moved ahead, as it did on the other 3 machines, the Carrier could have had the machine ahead sound its horn to warn that it was stopped, which is a requirement of the Carrier Rules, and the Carrier could have an Assistant Foreman, assigned to the charge of the spike drivers, to protect against the collision, which is part of his duty". Finally, the Vice Chairman noted that since the Claimant "provided Carrier with over 22 years of quality service", the treatment of the Claimant by Carrier was "unwarranted".

In a March 22, 2007 declination of the appeal, Carrier confirmed the parties' conference held on February 22, 2007. Initially, Carrier noted that the Claimant was provided a fair and impartial investigation in accordance with Rule 25 of the Agreement. Regarding the merits of the dispute, Carrier argued: *"Throughout the investigation as well as in the discipline appeal letter, Vice Chairman Smith consistently tried to shift the blame to the other parties. Testimony from the Claimant showed that this was not the first time he has operated a spike driver without a third man...Nevertheless, if the Claimant needed to assist in the loading of spike trays, he should have stopped the forward movement of the machine, loaded the trays, and then proceeded the forward*

movement of the machine when the track was clear”.

In terms of the *quantum* of discipline, Carrier stated that the forty-five (45) suspension was “fully justified”, arguing that: *“Within Mr. Smith’s November 21, 2006 appeal of discipline letter he stated that the Organization did not recognize this incident as a major offense thus not warranting the Claimant’s removal from service. However, as the Claimant violated several Operating Rules resulting in an on-track collision, which could have resulted in injuries and severe damage to Company property, the Carrier had no alternative but to handle this as a major offense, resulting in the Claimant’s immediate removal from service pending the outcome of the hearing”.*

The record demonstrates that the Claimant was afforded a fair and impartial investigation in accordance with Rule 25 (Discipline) of the Agreement and was present throughout the proceedings, accompanied by his duly authorized representative. Regarding the merits of the dispute, the Carrier clearly demonstrated Claimant Pritchett was indeed guilty of: “failure to perform duties safely, carelessness, reckless operation and failure to control his machine on October 4, 2006”, actions which clearly violated CSXT Operating Rules GR-2, 720, 727 and CSX Safeway Rules GS-3 and ES15. Moreover, Claimant Pritchett admitted during his testimony that he was not “paying adequate attention” while operating the equipment:

Q. Please state briefly the facts as you know them in regards to the incident that led to the charges?

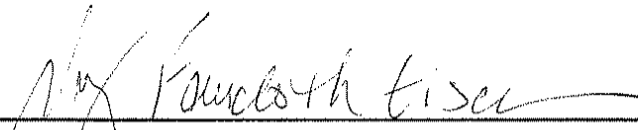
A. We was, uh, coming up to the end of the day and, uh, I had, uh spiked out and I blowed for, uh, the spiker, #3 spiker to move up so we can, uh, help finish spiking up. And, uh, as he proceeded to move up, you know, I was about six, sixty feet from it, you know. As he proceeded to move up then I gave him space enough to get on up ahead, and I proceed to move up behind him, and, uh, while we was trammig I, my, uh, other operator proceeded to feed spikes into the bin and so we was going to start filling our trays up. And I was focusing in on the machine up ahead, and, uh, looking down and reaching over in the bin, getting spikes and putting them into my trays, and, uh, I noticed that my inside tray I had to keep my eye on it to keep filling it up, because if I fill it up it will hang up and quit feeding spikes. Uh, you know,

you know, I just lost focus on the machine up ahead as I was reaching into the bin to get some spikes to put them into my tray. That's when I hit, and, uh, that's what happen.

In the circumstances, Carrier met its burden of persuasion that the Claimant was culpable as charged and we find no basis for disturbing the discipline assessed of a forty-five (45) day actual suspension.

AWARD

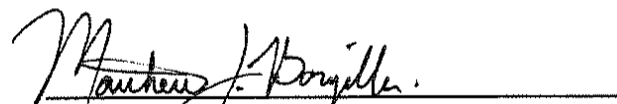
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 4-11-08



Company Member 4-11-2008