

PUBLIC LAW BOARD NO. 7008

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 J. B. Ivey ID#****, as a result of the hearing held on June 6, 2007, in conference room, 3656 Seaboard Ave., Nashville, TN. The discipline assessed was "time served (April 18, 2007 to May 13, 2007)" as shown by notice of discipline dated June 22, 2007.

For the reasons stated, as well as our numerous objections at the hearing, we emphasize once again, that Mr. Ivey be exonerated. It is respectfully that [sic] the charge letter and all matters relative thereto be removed from Mr. Ivey's personal file, and be made whole for all losses suffered as a result of the Carrier's actions.

OPINION OF BOARD:

J. B. Ivey ("Claimant" or Mr. Ivey) was hired by Carrier in the Engineering Department on June 6, 1978. At all times relevant to this issue, the Claimant was assigned as a machine operator working a Ballast Regulator on the SPT 6XT9 Tie Team.

On April 16, 2007, the Claimant and crew were working on the Mill Track, on the Memphis Subdivision, a fact pertinent to this dispute. The record demonstrates that at approximately 1238 hours, after the T9 surfacing crew had worked the switch, an FRA Inspector found the switch to

be lined properly, however the switch lock was not completely engaged. As a result, the Carrier was cited with a Code 1 violation. A preliminary investigation of the FRA Inspector's findings revealed that the Claimant was the last employee known to have operated the Mill track switch.

As a result of the incident, in April 19, 2007 correspondence the Claimant was directed to attend a formal investigation on charges of: *"Failure to properly perform your duties and failure to ensure that active warning devices are functioning as designed prior to the movement of trains or to otherwise provide an alternative method of protection. Your actions in connection with the above matter also indicate possible violations of, but not limited to, CSX Operating Rules - General Rule A and F, General Regulations-GR-2, GR-2A, and GR-16, as well as CSX Transportation TCR 1525-01 - Train Control Jumper Policy"*. The hearing was postponed on two (2) occasions and ultimately held on June 6, 2007 with both Claimant and his representative present throughout the proceedings. On June 22, 2007, the Carrier informed Claimant Ivey that: *"Upon review of the transcript, copy enclosed, the facts support and confirm the charges against you. Account your violations of the various rules cited above and account of the seriousness of EO-24, you are hereby assessed the discipline of time served, April 18, 2007 to May 13, 2007. I ask you take time and reflect on the incidents that led to these charges and take appropriate actions to learn from this experience. You are an important member of the CSX Team and I look forward to your future contributions"*.

In a letter dated July 1, 2007, the Organization took "strong exception" to Carrier's imposed discipline, contending that: *"Mr. Ivey is a diligent and hard working employee and is a valuable asset to the Company. We feel the discipline of time served is very harsh, and that Mr. Ivey is being treated very unfairly, and therefore we request he be exonerated. Furthermore and in accordance*

with Rule 25(f) of the Agreement, the Organization is to receive two (2) copies of the transcript. The Organization only received one (1) copy of Mr. Ivey's transcript. For reasons stated, as well as our numerous objections at the hearing, we emphasize once again, that Mr. Ivey be exonerated. Please advise this office when Mr. Ivey will be exonerated of these charges, and when the requested remedy will be made".

In a September 2007 reply to the Organization's appeal, Carrier argued that the Claimant was given a fair and impartial investigation, in accordance with the Agreement; Carrier sustained its burden of producing sufficient evidence proving the Claimant's guilt; and, the discipline assessed was warranted and fully justified. Regarding the merits of the dispute, the Carrier pointed to the testimony of Manager D. Rhodes, Roadmaster Thompson, and that of the Claimant. Specifically, Mr. Rhodes reported that: *"The FRA Inspector found the switch properly lined, but the lock just wasn't completely engaged"*. For his part, Roadmaster Thompson concurred with Mr. Rhodes, reporting that he had personally inspected the switch and found it locked, however, the lock hadn't been "clicked or fastened" properly. Further, when questioned regarding his part in the incident, the Claimant admitted: *"Yes, I did. I handled the lock. I was the last person with the T9 at that switch..."*.

Finally, with regard to the discipline assessed, Carrier averred: *"Claimant Ivey admitted to being the last person to have contact with the lock prior to the FRA inspection. Therefore, it is clear that Mr. Ivey failed to close the lock and make certain that it was secure..."*. According to Carrier, then, *"Claimant Ivey's discipline of time served (25 days actual suspension) was appropriate for the seriousness of the proven charges"*.

The record evidence before us demonstrates that the Claimant was afforded all of his due

process rights, and both the hearing and the investigation were conducted in a fair and impartial manner. The Claimant was given proper notice of the charges, sufficient time to prepare a proper defense, and the opportunity to present and cross-examine witnesses.

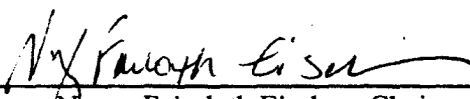
Turning to the merits of the dispute, the record evidence supports Carrier's findings of guilt in the circumstances presented. On April 16, 2007, after the Claimant and crew worked on a switch at the Memphis Subdivision an FRA Inspector found that the switch was properly lined, but the lock was "not completely engaged". Further, it is not disputed that the Claimant was the last employee known to have operated the Mill track switch. Although Mr. Ivey maintained that he carefully checked the lock, and indeed "tugged" on the lock prior to departing the area, the lock was not completely engaged when the FRA Inspector and Carrier officials examined it shortly after the Claimant's departure.

Significantly, in a forthright admission at the arbitration hearing, Carrier officials admitted that the lock was "pretty rusty" and that it would have been "easy" for the Claimant to check the lock and think that it was properly engaged, when, in fact, the lock was not completely engaged. In that connection, Carrier further admitted that upon further inspection, immediately after the incident Carrier officials replaced the lock at issue, due solely to its "deteriorated condition".

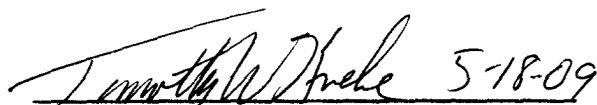
Premised upon the record evidence, as well as Claimant's lengthy and primarily unblemished personal record, we find that the imposition of a twenty-five (25) day actual suspension is not appropriate. In all of the facts and circumstances, we conclude that the twenty-five (25) day suspension must be reduced to a ten (10) days, and Carrier must make the Claimant whole for fifteen (15) days.

AWARD

- 1) Claim sustained in part and denied in part, in accordance with the Opinion.
- 2) The Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.
- 3) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise over the interpretation and application of the remedy.



Nancy Faircloth Eischen, Chair



Union Member



Company Member 5/18/09