

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES'
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 CSXT/BMWE Agreement, dated June 1, 1999, the following will serve as our appeal of the discipline of 30 actual days starting on May 22, 2007 and ending on June 20, 2007, contained in L. E. Houser, Acting Assistant Chief Engineer System Production Teams letter dated April 23, 2007, received in this office on April 25, 2007, addressed to M. M. Dawson, ID#*****.

Due to the fact that Mr. Dawson is considered a 'disciplined employee' and according to Mr. Houser's letter dated April 23, 2007, the justification of discipline us based on the dates of March 3 and March 4, 2006, which have nothing to do with anything in regard to Mr. Dawson, and or the crane turning over, we emphasize once again, that Mr. Dawson be exonerated. The charge letter dated March 6, 2006 should be stricken from Mr. Dawson's record and Mr. Dawson should be paid any and all loss of straight time and overtime he would be paid had he not been disciplined by the Carrier and all if any fringe benefits will be re-instated.

OPINION OF BOARD:

Machine Operator M. M. Dawson (hereinafter referred to as "Claimant" or "Mr. Dawson") was hired by Carrier on August 26, 2002. At all times relevant to this issue, the Claimant was assigned to System Production Gang (SPG) Machine Operator position 5XC7-67H.

On February 28, 2007, Claimant and his gang were replacing old rail and resurfacing portions of track near milepost 0ZA 381.80 in Evansville, IN. As the Claimant was threading the new rail with his crane, the rail began to "bunch and kick". Due to the "unsafe situation", Claimant's supervisor, Foreman R. Price instructed Mr. Dawson to "cease operations" while he requested a second crane to help "relieve the kinks". However, Mr. Dawson did not follow his foreman's instruction, instead replying, via his radio, "I think I can get it". As a result of Claimant's

failure to follow his supervisor's directive, the crane which Claimant was operating tipped over on its side.

Thereafter, in a letter dated March 6, 2007, the Claimant was instructed to attend a formal investigation scheduled for March 21, 2007. The letter stated, in pertinent part:

"The purpose of this formal investigation is to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on the 5CX7 System Rail Team on February 28, 2007, on the Evansville Terminal, near Milepost 0ZA 281.80, Evansville, IN. On this date, while threading rail into the track, the crane you were operating rolled onto its side. Based on this incident, there may have been a violation of CSX Operating Rules, Safety Rules and Procedures. The purpose of the formal investigation will be to discover whether or not any rules were violated....".

Following one (1) mutually agreed upon postponement, the investigation convened on April 10, 2007, with both the Claimant and his representative in attendance throughout the proceedings. On April 23, 2007, Carrier Assistant Chief Engineer for SPG(s) notified the Claimant that:

"Upon review of the transcript, the facts support and confirm insubordination as you failed to follow instruction when instructed not to move the crane on March 3, 2006. You failed to comply with CSX operating rules and policies. Additionally, you admitted in your testimony that you failed to comply with instructions from the foreman when you transmitted over the radio 'I think I can get it'. Account of the aforementioned violations, and your prior record, you are hereby assessed the discipline of 30 actual days starting on May 22, 2007 and ending on June 20, 2007. I ask that you take time to reflect on the incidents that led to your discipline and take appropriate actions to learn from this experience".

The Organization protested the discipline in a letter dated May 3, 2007. In that correspondence, BMWED Vice Chairman Griffith argued: *"This Organization takes strong exception to the fact that the terms of the Agreement were not complied with in accordance with Rule 24 and Rule 25 of the June 1, 1999 Agreement. Agreement Rule 25 (Hearings), specifically states 'the exact offense' will be contained in the charge letter. This was not the case. The proper objection was made on the record, however, the hearing officer continued with the investigation which led to the discipline of Mr. Dawson. The Carrier obviously made an investigation prior to serving the notice of charge against Mr. Dawson, instructing him to appear at the hearing, however, failed to list 'specific' charges within the charge letter"*.

With regard to the merits of the dispute, the Vice Chairman asserted: *Mr. Dawson was instructed by the Carrier to operate a 'new' crane and Mr. Dawson was new to the crane and was*

attempting to handle 1,440 feet of rail. And, according to testimony by K. E. Robertson, who charged Mr. Dawson, 'the rail just tries to bunch up itself and doesn't want to move so that makes the accordion type effect and you're trying to get the rail to move a little bit at a time instead of doing it all in one motion. We should have took two or three steps to make this happen...'". In that connection, the Vice Chairman noted that Mr. Robertson spoke of the Claimant as "a good crane operator", and argued that "mitigating circumstances" may have caused the crane to tip over.

In a denial letter dated September 27, 2007, Carrier asserted that the Claimant was: 1) afforded a fair and impartial investigation in accordance with the Agreement; 2) Carrier sustained its burden of proof of producing sufficient evidence proving Claimant's guilt; and, 3) the discipline assessed was warranted and fully justified.

With regard to the Organization's procedural objection that the Carrier had failed to list "specific charges", Carrier maintains that the *"exact offense was clearly outlined in the charge letter"*.

Carrier went on to assert that: *"The Carrier is not contractually bound to list specific rules that were violated as the purpose of the investigation is to produce evidence to judge if a specific rule was violated. Therefore, the charge letter provided to Claimant Dawson was in accordance with the language of the Agreement"*.

On the merits of the dispute, the Carrier argued that the testimony and evidence presented *"proved that Claimant Dawson is guilty of insubordination in that he failed to follow the instructions of Foreman Price which resulted in an equipment accident"*. Carrier further emphasized that Mr. Dawson's failure to follow his supervisor's instruction was *"a flagrant violation of Company policy"*.

Finally, with regard to the assessed discipline, Carrier maintained that Claimant Dawson's discipline of thirty (30) actual days' suspension is *"appropriate for the seriousness of the proven charges"*.

At the outset the Organization asserted that Carrier violated Rule 25(d) of the Agreement, which states, in pertinent part: "An employee who is accused of an offense shall be given reasonable prompt advance notice, in writing, of the exact offense of which he is accused with copy to the union

representative". Carrier's original charge letter set forth: "On this date, while threading rail into the track, the crane you were operating rolled onto its side. Based on the incident, there may have been a violation of CSX Operating Rules, Safety Rules and Procedures. The purpose of the formal investigation will be to discover whether or not any rules were violated". In the circumstances, the "exact offense" was clearly outlined in the charge letter and we therefore concur with hearing officer Moss who ruled that the charge was "specific enough for everyone to understand what we are here to talk about today..."

Turning to the merits of the dispute, the record evidence supports Carrier's finding of guilt. Following are excerpts from the transcript of the hearing involving the testimony of Manager Robertson and Foreman Price:

Manager Robertson:

Mr. Dawson stated that the rail started bunching and kinking up ahead of him. He then called Foreman Price and told him "he had a problem getting the rail up on the track". Mr. Price told him to "hold up" - that he would send another crane up to help relieve the pressure. Then Mr. Dawson said that he thought he could get the rail out. He moved to the end of the rail and the rail started moving toward the crane. He had the boom down on the low side of the rail, and at that time, the rail came toward him and grabbed hold and then rolled the crane over into the ditch...and that's where we are today. Mr. Dawson runs the crane- we felt that it was insubordinate in not following the foreman's instructions to wait until the other crane came to help him. Mr. Price gave him specific instructions to wait until the other crane pulled up...and Mr. Dawson went ahead and tried to get the rail one last time and that's when the incident happened. If he had followed the instructions given to him by the foreman, this incident would never have happened".

Foreman Price:

I was walking along, it was a left hand curve. Mr. Dawson was trying to thread rail from the high side down over the embankment up into the gauges of the track. He was having trouble getting the rail up in the track because it was quite a distance to bring the rail up and he was almost to the end of the curve when I noticed the rail was trying to "climb out" of the gauge and part of it was sitting on top of the low rail. I told Mr. Dawson to "stop and wait" for the middle crane to set the cripper off so he would come and assist him before the rail got away from him. I heard Mr. Dawson say: "I think I can get this..."

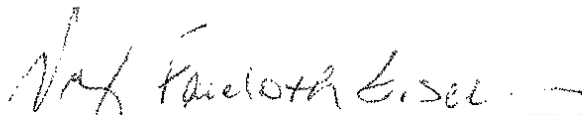
When asked if he had given the Claimant "instructions to wait until the other crane came to help", Foreman Price answered in the affirmative, adding that in his opinion, "the Claimant did not follow my instructions".

Although the Organization correctly noted that Mr. Robinson stated that the Claimant "is a good crane operator", that begs the question before us. The facts of the dispute are clear and simple and have very little to do with the Claimant's prowess as a crane operator, but rather whether Dawson, on February 28, 2006, disregarded his supervisors explicit instruction to "stop movement". The record evidence clearly demonstrates that the Claimant continued to operate his crane after Foreman Price instructed him not to do so, which resulted in the crane tipping on its side. Said actions created an unsafe condition, and resulted in damages to the crane estimated at \$35,000. More to the point, the Claimant caused injury to himself and could have injured other employees.

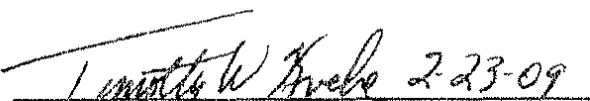
For the proven charge of insubordination Carrier assessed the Claimant discipline of thirty (30) actual days' suspension. Given the serious nature of Claimant's failure to follow his supervisors directive, the discipline is commensurate with the offense and cannot be considered unduly harsh or inappropriate in the circumstances.

AWARD


Claim denied.



Nancy Faircloth Eischen, Chair



Union Member



Company Member