

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 24, Section 3, of the June 1, 1999 Agreement between CSXT and BMWED, the following will serve as our appeal of the assessed discipline of termination of employment with CSX Transportation, including the removal from all seniority rosters starting August 14, 2007 and received in this office on September 4, 2007 and addressed to M. M. Dawson, ID#*****.

...Again, we emphasized that Mr. Dawson be exonerated. The August 1, 2007 charge letter should be stricken from his record and Mr. Dawson should be paid all straight overtime that he would have made had he not been terminated by the Carrier and all fringe benefits re-instated along all seniority dates back on all seniority rosters.

OPINION OF BOARD

Production Trackman M. M. Dawson ("Claimant") was hired by Carrier on August 26, 2002. At the time this issue arose, the Claimant was a member of a System Production Gang (SPG) assigned to position 6XC9-081. On July 23, 2007, the Claimant and his team were performing resurfacing tasks, working in the vicinity of Martin, KY. Pertinent to this dispute, Mr. Dawson was operating a "Rubber Tired Crane" (hereinafter referred to as "the crane") threading new rail into the track. Of note, Trackman R. Maney was working immediately behind the crane, grinding rail. While the Claimant was threading rail he was also backing up toward Trackman Maney who was behind him, grinding rail. At some unspecified point during the workday, the Claimant backed into Mr. Maney's "Red Zone" causing the Trackman to "jump out of the way to avoid injury...".

As a result of the incident, on August 1, 2007, Carrier instructed the Claimant to attend an August 13 formal investigation regarding the following:

"...failure to properly and safely perform the responsibilities of your assignment, failure to control your machine and possible violations of, but not limited to, CSX Transportation Operating Rules - General Rule A; General Regulations GR-2, GR-8, Section 7 On=Track [sic] Work Rules 713 and 727; as well as, CSX Safe Way General Safety Rule GS-1 and [sic] Engineering Department Safety Rule ES-15".

The investigation convened as scheduled, with both Claimant and his representative in attendance. By letter dated August 31, 2007, Carrier informed Claimant that he had been found guilty as charged and dismissed from Carrier's service. In that letter, Carrier specified that it had based the discipline on: *"the seriousness of the proven violations, and past discipline record..."*. Vice Chairman Lopez timely appealed the discipline in correspondence dated September 12, 2007. At the outset, the Vice Chairman argued that Carrier *"failed to inform the Claimant of the exact charge, instead charging Mr. Dawson with a hand full of rule violations hoping one would stick"*. The Vice Chairman further argued that: *"The Carrier was informed on August 9, 2007 that the employees' representative did not receive the charge letter on Mr. Dawson until that day and on that same day and asked for a postponement so we could prepare a proper defense and call our own witnesses. The Organization was told there would be no postponements on this hearing. Therefore, the Carrier was not affording Mr. Dawson a fair and impartial hearing"*.

Regarding the merits of the charges, Mr. Lopez alleged:

"The Carrier charged Mr. Dawson with failure to properly perform the responsibilities of his assignment and with failure to control his machine. However, the Carrier did not prove this with testimony or facts. Mr. Dawson had control of his machine at all times, his machine did not get away from him he was not doing excessive speed. Mr. Dawson sounded the horn three times...he was working in a backward direction which is a difficult job in itself..."

In a December 13, 2007 letter, Carrier Director Labor Relations Amidon denied the claim, maintaining that the Claimant was informed of the "exact charges" in the August 1, 2007 notice. With regard to the Organization's allegation that Carrier violated the Claimant's due process rights because a postponement was not granted, Carrier noted that the argument was made *"during closing comments in what appears to be a belated request, and only after all the evidence and testimony was*

presented against the Principal. Consequently, it is obvious that the objection was only an afterthought and of such insignificant importance to the Organization that it was brought up at the conclusion. At best, your assertions upon appeal are disingenuous at best and of little cause...".

Regarding the merits, Mr. Amidon argued that: *"Sufficient evidence exists to demonstrate that Mr. Dawson did, in fact, violate several operating and safety rules that resulted in the need for the other employee to have to jump out of the way in order to avoid injury. The clear facts are that on the day in question Mr. Dawson was responsible for controlling his equipment and admits he had 'no idea' where Mr. Maney was at the time of the incident. However, the testimony of Mr. Dawson clearly demonstrated that he was aware that Mr. Maney 'was in close proximity', but took no precautions to ensure that he was in the clear before he proceeded with his own work. In reviewing the circumstances related to this matter, Mr. Dawson's lack of attention and focus on the work at hand and the employees working in his vicinity contributed to the incident, thus placing a fellow employee, as well as Carrier's property, in peril. Based on the fact that sufficient evidence exists to demonstrate his guilt and his past record, the penalty of termination is not unwarranted."*

Further efforts to resolve the dispute were not successful, therefore, the issue has been placed before the Board for adjudication.

At the outset, the Organization alleged certain procedural violations, which it maintained, were fatal to Carrier's case. First, the Vice Chairman maintained that the Claimant was not informed of the "exact charges" against him in Carrier's formal investigation notice dated August 1, 2007. However, on that point we do not concur. The Carrier's letter stated the following: *"The purpose of this letter is to determine the facts and place your responsibility, if any, in connection with an incident when, as the assigned operator of a Rubber Tired Crane, you entered the Red Zone of another employee who was grinding rail causing the employee to jump out of the way while pushing the grinder into the clear. In connection with the matter, you are charged with failure to properly and safely perform the responsibilities of your assignment, failure to control your machine and possible violations of, endangering another employee, and possible violations of, but*

not limited to, CSX Transportation Operating Rules - General Regulations GR-2, GR-8; Section 7 On-Track Worker Rules 713 and 727; as well as, CSX Safe Way General Safety Rule GS-1 - land Engineering Department Safety Rule ES-15". In the circumstances, the Claimant was clearly informed of the "exact charges" for which he was being summoned to the August 13, 2007 formal investigation.

Secondly, the Organization asserted that Claimant's procedural rights were trammled when Carrier "refused" to postpone the August 13 investigation. According to the Organization, it did not receive notification of the hearing until August 9, 2007, and when the Vice Chairman requested a postponement, Carrier "refused" to grant same because the "hearing officer already has his plane ticket". However, the record evidence indicates that the assertion is not accurate. Specifically, in uncontested testimony, Carrier Officer Amidon stated that the Organization did not report that it had not received Carrier's August 1 letter until August 9, until the "end" of the August 13 hearing, during closing arguments. In that connection, the record is bereft of any correspondence in that regard, nor do we find any evidence which supports the Organization's assertion with respect to the alleged postponement request.

Turning to the merits of the dispute, the facts of the case are largely uncontested. In the midst of his July 23, 2007 workday, the Claimant, while operating a crane, backed into co-worker Maney's Red Zone, forcing Mr. Maney to "jump out of the way" to avoid being injured. As a result, the Claimant was discharged. The Organization asserts that the discipline of dismissal is inappropriate in the circumstances, however, we do not concur.

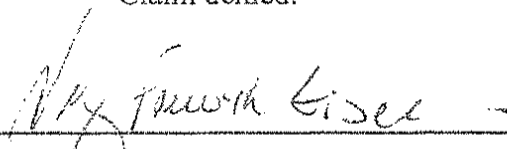
Specific to the case now before us, the record evidence demonstrates that on July 23, 2007, Claimant Dawson, while operating a crane, entered the "Red Zone" of fellow employee Maney who was grinding rail. As a result, Mr. Maney was forced to "jump" out of the way, at the same time pushing the grinder into the clear. A cursory review of the Claimant's personal record reveals that this is the third (3rd) claim on behalf of this employee, the two prior of which emanated from a February 28, 2006 incident. On February 28, 2006, while resurfacing track in Evansville, IN, Mr.

Dawson failed to follow his supervisor's directive to stop his crane. As a result, the crane which the Claimant was operating tipped over, causing an injury to the Claimant and approximately \$35,000 worth of damage to the crane. Thereafter, the Claimant failed to report his injury and was summoned to an investigative hearing for "failure to follow Carrier's regulations when seeking medical attention". Following an April 10, 2007 hearing, the Claimant was found guilty of the charges and was assessed a fifteen (15) day actual suspension. Thereafter, on March 6, 2006, the Claimant was summoned to a second investigation, regarding the same February 28, 2006 incident, to be held on March 21, 2006, specifically in regard to a charge of "insubordination" for failing to follow his supervisor, Foreman Price's directive to "cease operations" when the rail began to buckle. Similarly, the Claimant was found guilty of the charge(s) and assessed the discipline of thirty (30) actual days (upon his return to work) beginning May 22, 2007 and ending on June 20, 2007.

Premised upon Claimant's personal record noted *supra*, the Organization's assertion that the discipline of dismissal is "inappropriate, capricious and harsh" is without merit in these circumstances. Therefore, this claim must be denied.

AWARD

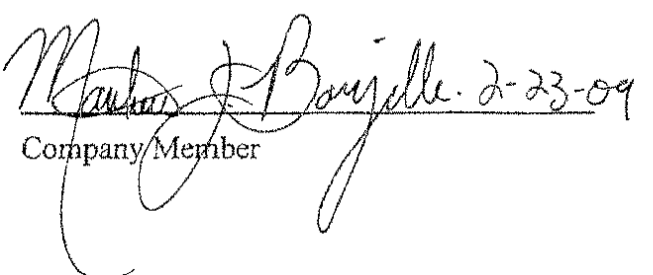
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member



Company Member