

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 Rule 25, Section 3 of the CSXT/BMWE Agreement, dated June 1, 1999, the following will serve as our appeal of the discipline assessed to BMWE represented member J. S. Cox, ID#*****, by Bruce Fowler, Division Engineer, Florence Division, as a result of the investigation held on Thursday, August 9, 2007.....

...we hereby request Mr. J. S. Cox, ID#*****, be exonerated from these charges against him and all matter relative thereof. We request Mr. Cox immediately have his seniority rights restored and compensated with all loss wages and fringe benefit rights due to Carrier's action and violations of any and all of the provisions of the June 1, 1999 CSXT/BMWE, collective bargaining agreement...

OPINION OF BOARD:

Track Inspector J. S. Cox (hereinafter referred to as "Claimant" or "Mr. Cox") was hired by CSXT on December 11, 2000. On March 2, 2007, Claimant Cox was assigned as Track Inspector on Team 5F16 located at Apex, NC. While driving along Route 147 at approximately 5 p.m., the company vehicle the Claimant was operating began to "shake", due to a defective bearing on the drive shaft. According to the Claimant, he attempted to repair the vehicle, however, while "pulling/realigning" the bearing and shaft, he experienced "pain" in his neck and left shoulder. It is not disputed that the Claimant did not report the alleged incident.

After reporting for duty the next day, March 3, 2007, the Claimant inspected the Norlina Subdivision and performed repairs at various locations between MP102.9 and 152.8. The Claimant worked all of his assigned hours and departed the property without making any reference to the “injury” Mr. Cox alleges he incurred the day before.

Thereafter, on May 4, 2007, the Claimant approached Roadmaster J. Kirkland and told him he wanted to fill out the requisite form (PA-1A) to “officially report the injury” which he allegedly incurred on March 2, 2007. As a result of his failure to report the “injury” until May 4, 2007, some sixty-four (64) days after allegedly incurring same, the Claimant was directed to attend a May 29, 2007 investigation and charged with violation of:

1. Rule GS-5 of the CSXT Safeway
2. Rule GS-25 of the CSXT Safeway
3. General Rule A of the CSXT Operating Rules
4. GR-2 of the CSXT Operating Rules

Following two (2) postponements at the Organization’s request, the hearing was convened on August 9, 2007, with the Claimant and his duly authorized representative in attendance. On August 29, 2007, Carrier informed the Claimant that:

“You were charged with late reporting of an alleged injury, possible falsification of an injury, dishonesty, and possible failure to remove a CSX vehicle from service when you allegedly attempted to repair it. Your actions in connection with this matter appeared to be in violation of, but not limited to CSX Transportation Operating Rules - General Rule A and General Regulations GR-2 and CSX Safe Way General Safety Rules - GS-5, as amended August 26, 2006 and GS-24. After careful review of the transcript and exhibits of this investigation the facts support and confirm the charges brought against you. Due to the seriousness of the charges, discipline assessed in this case is your immediate dismissal from service of CSX Transportation and forfeiture of all rights and seniority”.

In a September 13, 2007 letter, the Organization appealed Carrier’s decision premised , in pertinent part, upon the following:

"Upon review of the transcript, (Carrier) Supervisor Castle who charged Mr. Cox, reveals that he was initially made aware of possibly anything going on (with Claimant's alleged injury) was on the 15th day of March 2007 while Supervisor Castle was traveling on the railroad following Mr. Cox during a track inspection. Apparently Mr. Castle asked Mr. Cox why he wasn't using a machine normally used to tighten track bolts during his track inspection. The Claimant told him he had hurt his shoulder while he was at home.....".

With regard to Roadmaster Kirkland's alleged knowledge of the Claimant's injury prior to May 2, BMW Vice Chairman R. D. Griffith maintained that:

"The Claimant told Mr. Kirkland that he 'felt pain' while attempting to repair a CSXT vehicle he had been assigned by the Carrier to operate in order to perform his duties of track inspection. According to Supervisor Castle, Mr. Kirkland was obligated, as a Carrier official, to document at that time what had occurred. Yet Mr. Kirkland maintains that the Claimant did not talk to him about his injury. However, a review of the Claimant's cell phone record confirms the fact that he called Kirkland's cell phone number and they talked for about 15 minutes. The Claimant called Mr. Kirkland again at 6:03 p.m. and talked for 2 minutes. It appears suspicious that Mr. Kirkland does not recall having either of these conversations... The Carrier witnesses were only present to testify negatively against Mr. Cox and neither Special Agent O'Neil or Track Inspector Karolchuk provided relative testimony against the Claimant. For example, CSXT Special Agent O'Neil attempts to suggest that alcohol was used by Mr. Cox while the CSX vehicle (now under discussion) was being repaired. There is no proof of that and the investigation was not held to determine alcohol consumption by Mr. Cox".

When asked why it took two months to "get" the PI-1A report, the Claimant asserted that:

"At first, me and Mr. Kirkland tried to keep this covered up. We did not think the injury was as bad as it turned out to be and hoped it would go away....".

Finally, the Vice Chairman contended: *"The fact of the matter is, Mr. Cox did injure himself on March 2, 2007 and he did relay the information to Supervisor Kirkland on March 2 who in turn agreed with Mr. Cox not to fill out an injury report at that time because neither of them knew the extent of his injury. Mr. Cox never refused to fill out an injury report".*

In its December 10, 2007 denial to the Organization's appeal, Carrier confirmed the

November 14, 2007 conference between the Parties regarding the issue, reiterating that the Organization “provided no additional information, arguments and/or documentation during the conference” which would influence Carrier’s decision. Carrier went on to note that all of Claimant’s due rights were fully protected and the hearing was conducted in a fair and impartial manner. Regarding the merits of the issue, Carrier asserted that: *“The facts and testimony at the investigation established that Mr. Cox failed to timely report an injury, was dishonest, and failed to remove a CSX vehicle from service. We find nothing that would justify changing the Carrier’s decision in this case”*.

Continued efforts to resolve the dispute on the property were not successful. Therefore, it was properly placed before the Board for adjudication.

Careful review of the transcript reveals that all of the Claimant’s due process rights as provided for under the Agreement were fully protected and the hearing was held conducted in a fair and impartial manner. The investigation was originally scheduled for May 29, 2007, however, it was postponed by letters dated May 24, 2007 and August 4, 2007. The Claimant acknowledged that he received the original notice, as well as the follow-up notices, and when the investigation convened on August 9, 2007, both the Claimant and his duly authorized representative were present throughout the proceedings.

Turning to the merits of the dispute, the record reveals the following sequence of events: Engineer of Track Castle indicated that he first became aware of the Claimant’s problem on March 15, 2007, while hi-railling with Roadmaster Kirkland. Mr. Castle stated that they were following the Claimant during a track inspection, and he noticed that Mr. Cox was not using the impact wrench to tighten bolts. When he was asked why, the Claimant stated, unequivocally, that he had “hurt his

shoulder” the previous week while he was “at home working on his truck”. Thereafter, on March 19, 2007, the Claimant requested a vacation day because he was “going to the doctor because of his shoulder”. On March 20, 2007, the Claimant informed Mr. Kirkland that his doctor “gave him a prescription and prescribed therapy for his shoulder” and requested vacation time.

Mr. Kirkland reported that he did not speak to the Claimant again until March 30, 2007, when the Claimant called to tell him that he was “out of vacation and out of money” and was “thinking about changing” his original statement from working on “his truck” to working on a “company truck”. According to Mr. Kirkland, throughout the May 30 conversation the Claimant’s “speech was slurred” and at times, he was “incoherent”. Mr. Kirkland advised the Claimant to “think about what he wanted to do” and inform him of same.


According to Mr. Kirkland, he did not speak to the Claimant again until April 19 and 24, 2007 when the Claimant informed told him that “tests were being run” and he would let Mr. Kirkland know the results. Thereafter, on April 27, 2007, the Claimant left a message for the Roadmaster that: “surgery is going to be required” and an “insurance company will be investigating” [the injury]. Finally, on May 2, 2007, Supervisor Castle personally spoke with the Claimant who reported that he “hurt his shoulder around March 1, 2007”, while trying to “fix a bearing on the company truck”. Mr. Cox went on to contend that the truck started “shaking” and that he tried to fix it, but to no avail. According to the Claimant, he did not have any other transportation, so he decided to drive the truck home. Of note, during his conversation with Supervisor Castle, the Claimant reiterated “several” times, that he was “out of money” and that his “family came first”. At the end of that conversation, the duo agreed that Mr. Cox would come in the following day, May 3, to complete the requisite paper work however, he did not actually do so until May 4, 2007.

The Claimant was charged with violating four (4) Carrier rules: General Rule A and General Regulations GR-2 and CSX Safe Way General Safety Rules GS-5 and GS-24. General Rule A states that: *“Employees must know and obey rules and special instructions that relate to their duties. When in doubt as to the meaning and application of any rule or instruction, employees must ask their supervising officer for clarification”*. Rule GR-2 states, in pertinent part, that employees must not: *“Be disloyal, dishonest, insubordinate, immoral....., Make any false statements, or conceal facts concerning matters under investigation”*. GR-5 stipulates that employees must report incidents on the day they occur, and GS-24 sets forth: *“If any of the vehicle's equipment or safety devices are unsafe: Do not ride in the vehicle; Remove the vehicle from service, if it is under your charge....”*.

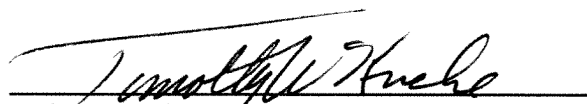
Although the Organization asserts that the Carrier failed to prove the charges against the Claimant we do not concur. The record clearly demonstrates that the Claimant did violate each of the rules with which he was cited, and Carrier's findings of guilt are fully supported by the record evidence. Consequently, we find no basis to modify or overturn the imposed discipline of dismissal. Premised upon all of the foregoing, this claim must be denied.

AWARD


Claim denied.



Nancy Faircloth Eischen, Chair



Union Member 3-12-09



Company Member 3/12/09