

**PUBLIC LAW BOARD NO. 7104**

<b>BROTHERHOOD OF</b>	)	
<b>MAINTENANCE OF WAY EMPLOYEES</b>	)	
<b>DIVISION – IBT RAIL CONFERENCE</b>	)	
	)	<b>CASE NO. 9</b>
<b>vs.</b>	)	<b>AWARD NO. 9</b>
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	

**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. Gower, 570720, as a result of a hearing held January 4, 1007, in the CSX Depot, at the CSX Engineering Office, located at 1590 Marietta Blvd., Atlanta, GA 30318.**

**For the reasons stated, as well as our numerous objections at the hearing, it is respectfully [requested] that the charge letter and all matters relative thereto be removed from Mr. Gower's personal file, and he be made whole for all losses suffered as a result of the Carrier's action.**

**FINDINGS:**

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, J.B. Gower, has been employed by the Carrier since June 16, 2003, and at all relevant times was assigned to the position of Trackman. On December 15, 2006, Claimant was charged to attend an investigation, as follows:

The purpose of this investigation is to determine the facts and place your responsibility, if any, in connection with an incident that occurred at or near Carlton, GA at SG 481.8 on the Abbeville Subdivision in which you seriously injured yourself.

Following the investigation, Claimant was found guilty of the charges and assessed a five-day actual suspension. The violation also activated a previous five-day overhead suspension, for a total of ten days.

The essential facts of this case are not in dispute. R.E. Moore, Jr., Carrier Engineer of Track, stated at the investigation that Claimant was working for him on the day of the incident, installing crossties on the Abbeville Subdivision, at the SG 481.8. He stated that Claimant removed a keg of spikes from the back of the truck, set it down on the rear bumper, and opened it to distribute spikes to the locations where the crew was installing ties. Mr. Moore explained that the keg weighs approximately one hundred pounds and has a metal lid with about 18 tabs around the top. He stated that to remove the lid the employee pries the tabs up around the lid. He stated that on this occasion, based upon his investigation of the incident, Claimant lifted only a portion of the tabs, and therefore used excessive force to remove the lid. He explained that, based upon his experience, the lid would not come off easily with only some of the tabs lifted. As a result, he stated, Claimant sustained a serious cut to the forearm, very close to a main artery, which could well have been life threatening.

Claimant testified at the investigation that on the day of the incident he retrieved a keg of spikes from the truck, and opened the tabs about halfway around the top of the can, bending the lid upward. He explained that at first he did not know how many spikes he would need, but then decided that he might use all of them so he pulled off the lid, grabbing it with one hand. Claimant testified that he cut his arm on the lid, requiring 13 stitches. Claimant stated that he believed he was working safely.

The Carrier first asserts that all of the Claimant's procedural rights were fully protected and the hearing was conducted in a fair and impartial manner. On the merits, the Carrier asserts that it demonstrated, with substantial evidence, that Claimant failed to perform his duties safely, in violation of several Carrier Rules. In addition, the Carrier points out, Claimant admitted that he improperly removed the top of a canister of spikes, creating an unsafe condition which resulted in a laceration to his arm requiring 13 stitches. Such an admission, the Carrier urges, satisfies its burden of proving Claimant's guilt by substantial evidence.

With respect to the penalty assessed, the Carrier notes that it must ensure that all employees conduct themselves in the safest manner possible, to protect not only Carrier employees but the general public. Numerous awards, the Carrier states, uphold discipline, up to and including dismissal, of employees whose unsafe actions result in personal injury. Thus, the Carrier concludes, its imposition of a 10-day suspension against Claimant was not arbitrary, excessive or capricious, and should be upheld by this Board.

The Organization contends that the Claimant is a diligent and hard-working employee who is a valuable asset to the Carrier and complied with all Carrier rules. He was injured, the Organization contends, by a defective spike can. The discipline

assessed, a 10-day suspension, is, the Organization asserts, very harsh and should be overturned.


We have carefully reviewed the record in its entirety, and conclude that substantial evidence supports Claimant's guilt of these charges. First, we find that there are no procedural issues which interfered with Claimant's right to a full and fair investigation. On the merits, it is undisputed that Claimant failed to remove all of the tabs before removing the lid from the can of spikes. The testimony of the Carrier witness established that the proper procedure is to remove all of the tabs, because otherwise the lid would not come off easily and excessive force would be used, which could lead to injury. That is exactly what occurred here. Thus, Claimant's guilt has been proven by substantial evidence.

The Carrier has a right to expect its employees to work in the safest manner possible, to protect themselves as well as members of the public. In light of the charges proven, we cannot find the penalty determined appropriate by the Carrier excessive.

**AWARD**

**Claim denied.**

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
MATTHEW BORZILLERI  
Carrier Member

Dated this 10<sup>th</sup> day of October, 2008.

  
TIMOTHY KREKE  
Organization Member

Oct. 10, 2008