

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 16
vs.)	AWARD NO. 16
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Brotherhood that:

1. The thirty (30) day suspension imposed upon Machine Operator Herman C. Nettles for alleged violation of CSXT Operating Rules GR-2, 720 and 727, CSX Safeway Rules GS-3 and ES-15 is unjust, unwarranted and in violation of the Agreement [System File D21147606/(12(06-1309) CSX].
2. As a consequence of the violation outlined in Part (1) above, the charge letter and all matter relative thereto should be removed from Mr. Nettles' personal record and he should be made whole for all losses suffered.

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.

Claimant has been employed by the Carrier since 2000, and has held the position of Machine Operator at all relevant times. On October 10, 2006, he was charged to attend an investigation to "ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on the 5XT1 Team, at approximately 1515 hours, on October 4, 2006, at or near MP 284.7, on the S & NA (North) Subdivision, Athens, Alabama, where in the spike driver you were operating on 5XT1 struck the spike driver ahead of yours, causing damage to both machines." Following the investigation, the Carrier found Claimant guilty of the charges, noting that although he was not the primary operator of the machine, he shared responsibility for maintaining a safe distance between his machine and the one in front of him. Claimant was assessed a 30-day suspension. Machine Operator K.M. Pritchett, who was operating the machine at the

time of the incident, was assessed a 45-day suspension, which was upheld by PLB 7008, in Award No. 33.

Claimant testified at the investigation that he and Mr. Pritchett were on spike driver #4 on the day of the incident, with Mr. Pritchett operating the machine, when they collided with the machine in front of theirs. He testified that he was bringing spikes from the bin up to the middle tray. Claimant stated that they were operating at a speed where they could have stopped and avoided the collision, had they looked up. Claimant acknowledged that he, as well as the primary operator, had the ability to stop the machine if necessary. He also stated that if there had been a third employee, a spike feeder, on the machine, it would not have been necessary for him to fill the spike bin in the middle, and he would have been in a better position to observe the situation ahead of him. Mr. Pritchett also testified at the investigation, and stated that the cause of the collision was that he "just lost focus for a second."

Ronnie Musgrove, Carrier Manager of Work Equipment, testified at the investigation that Claimant was responsible for watching the machine's movement to make sure the way was clear. He stated that the machine provided for a third employee to fill spike trays, but Claimant's spiker did not have a feeder because of manpower constraints. He stated that this spiker often operated without a third employee.

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 is guilty of failing to perform his duties safely, in violation of several Carrier rules. Indeed, the Carrier notes, Claimant admitted that the cause of the collision was that he did not look up to see that his spike driver was too close to the one in front of it. The Carrier points to well-established precedent that such an admission is sufficient to satisfy its burden of proof. With respect to the penalty assessed, the Carrier notes that Claimant's violation was classified as a Major Offense, for which an employee may be dismissed for a single violation. The Carrier notes that in PLB 7008, Case No. 33, a 45-day suspension was upheld against Claimant's co-worker. Thus, the Carrier concludes, the penalty assessed against Claimant was lenient and should not be disturbed by this Board.

The Organization asserts that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. Contrary to the Carrier's contention, the Organization states, Claimant made no admission of guilt. Instead, the Organization points out, Claimant was not operating the machine, and he merely stated that the machine could have been stopped had the operator lifted his head. The Organization states that in this situation the operator, not Claimant, was responsible. The Organization also notes that the machine was absent the third spiker usually present, which increased the duties of the two employees on the machine to an unsafe level. Therefore, the Organization states, the claim should be upheld.

The Board has carefully reviewed the record in its entirety, and finds that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. As the


Carrier asserts, Claimant admitted that he, as well as the primary operator, had the ability to stop the machine, and the collision could have been avoided had he looked up from what he was doing. Thus, his failure to pay sufficient attention contributed to the accident, and he is properly held accountable. In addition, although the Organization and Claimant urge that the accident could have been prevented had a third employee been present on the spiker, the record is clear that due to manpower constraints the machine operated with only two employees much of the time, and Claimant was clearly accustomed to the situation and needed to do what was necessary to work safely. Thus, his guilt has been proven.

Under the circumstances, especially in light of the fact that a 45-day suspension was upheld against the primary operator, we cannot find the penalty assessed by the Carrier to be arbitrary, discriminatory or unfair.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member


TIMOTHY KREKE
Organization Member

Dated this 10th day of October, 2008.

Oct. 10, 2008