

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 28
vs.)	AWARD NO. 28
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The dismissal of B&B Machine Operator Wayne A. Neisz for violation of CSX Operating Rules General Rule A; General Regulations GR-2, GR-5 and GR-16 in connection with damage sustained to the outrigger on Vehicle #610020 on December 13, 2007 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File D70718708/2008-005612).
2. As a consequence of Part I above, we request that Mr. Neisz be exonerated and that the charge letter and all matters relative thereto be removed from Mr. Neisz’s personal file, he be returned to the employment of CSX Transportation with all rights and seniority and he be made whole for all losses suffered as a result of the Carrier’s actions.”

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 had been employed by the Carrier since 1981. On January 2, 2008, the Carrier charged Claimant to attend a formal investigation, as follows:

The purpose of this investigation is to determine the facts and place your responsibility, if any; in connection with my investigation into damage sustained to the outrigger on vehicle #610020. When questioned about the incident on December 13, 2007, you gave a different description of how the incident occurred than you did when you originally called in the report of the damage to me on December 11, 2007.

In conjunction with the above matter, you are charged with failure to perform your duties in a safe, proper and efficient manner, making false statements concerning matters under investigation and dishonesty in possible violation of, but not necessarily limited to, violations of CSX Operating Rules—General Rule A; General Regulations GR-2, GR-5 and GR-16.

Following the investigation, Claimant was found guilty of the charges and dismissed from Carrier's service.

The facts of this case are not in dispute. On December 11, 2007, Claimant, who was assigned as a boom truck operator, called Carrier Manager of Bridges B. Stepp and told him the outrigger on the left rear of his boom truck had broken. Mr. Stepp testified at the investigation that he asked Claimant if he could have damaged the machine by hitting anything, and Claimant replied in the negative. Mr. Stepp instructed Claimant to take the truck to the shop, which he did. Over the following two days, Mr. Stepp had conversations with the shop's employees, who told him that when Claimant brought the truck in he told them he had hit something with the outrigger, causing the damage. The damage was estimated at \$6500.00.

On December 13, 2007, Mr. Stepp met with Claimant and discussed the incident. Claimant acknowledged at the investigation that during that meeting he informed Mr. Stepp that the outrigger might have been damaged when it slid across the ground and hit a piece of concrete. Claimant explained that when the truck broke down, it did not dawn on him that hitting the concrete could have been the cause of the damage. Rather, he stated, it occurred to him after thinking through matters on his way to the shop. He acknowledged that he told the shop employees about hitting the concrete, and stated that they told him hitting concrete could not have caused that damage. Claimant further acknowledged that he did not think to tell Mr. Stepp about hitting the concrete at the time he told the shop employees, but testified that he offered the information as soon as he met with Mr. Stepp.

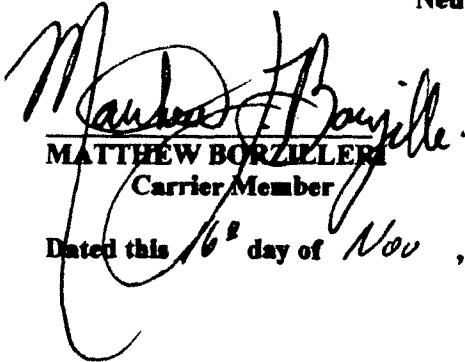
We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a full and impartial investigation. On the merits, we find the record insufficient to meet the Carrier's burden of proving that Claimant was deliberately dishonest in his communications regarding the damage to his truck. The record does, however, support the conclusion that Claimant is guilty of misconduct, as he was not sufficiently forthcoming and forthright. When Claimant realized that hitting the concrete might have caused the damage, it was his obligation to immediately relay those suspicions to his supervisor, and he failed to do so.

With respect to the penalty assessed, we find dismissal too severe a sanction for the misconduct proven. Following the hearing in this matter, the Neutral Chairperson issued a bench order returning Claimant to service. We find it appropriate to reduce the discipline to a 30-day actual suspension.


AWARD

Claim sustained in accordance with findings.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member

Dated this 6th day of Nov, 2009.


TIMOTHY KREKE
Organization Member

11/16/2009

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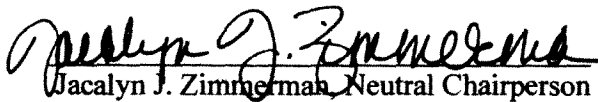
FINDINGS:

The parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction over the dispute herein.

The Neutral Chairperson hereby issues a “Bench Decision” to the effect that Claimant Wayne A. Neisz should be returned to active service in accordance with prevailing procedures currently in effect on this Carrier. The Board will issue a final award disposing of this dispute in its entirety in the near future.

INTERIM AWARD

The Carrier is instructed to return Claimant to service as promptly as possible, but in no event later than 30 days from the date of this Award.


Jacalyn J. Zimmerman, Neutral Chairperson

Interim award date: March 25, 2009