

PUBLIC LAW BOARD NO. 7104

AWARD NO. 39

CASE NO. 39

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The thirty (30) day suspension imposed upon Track Inspector Jason A. Clark for violation of CSX Transportation Operating Rules 703, 704 (Part 5, Section a, b, e, f and h) and Safety Rules ES-14 (a and d) is unjust, unwarranted, excessive and in violation of the Agreement (System File D70818208/2008-7550).
2. As a consequence of Part 1 above, we request that Mr. J. A. Clark be exonerated from the charges placed against him in the letter dated December 20, 2007 by CSXT Roadmaster Brooks and all matter relative thereof be removed from the record. We request Mr. Clark be compensated with all lost wages and benefits due to the Carrier's action and violations of any and all of the provisions of the June 1, 1999 CSXT/BMWE collective bargaining agreement."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Our review of the record shows that there are no procedural objections of significant and essentially no dispute over the basic facts. Claimant was the employee in charge of a rail grinding operation during the early morning hours of December 12, 2007. He had obtained track authority between Mileposts 37.8 and 21.95 on the RF&P subdivision to protect the grinder and its crew.


Unfortunately, he misunderstood the information in the timetable he had with him and unwittingly instructed the grinder to pass beyond Milepost 21.95 and occupy track without authority. According to the record, the dispatcher caught the incursion, which action prevented any accidents. However, some six train operations were delayed as a result.

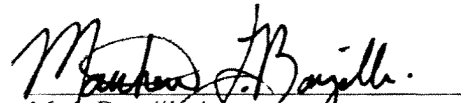
We find the record does contain substantial evidence in support of the Carrier's determination that claimant violated applicable operating and safety rules. To his credit, claimant acknowledged his error and accepted responsibility for his actions. Nonetheless, the nature of his misconduct is quite serious in that it can lead to serious injuries or even death. Attention to detail regarding track authority is extremely important. Under the circumstances, we do not find that the Carrier's disciplinary decision was harsh or excessive. The claim, therefore, must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: May 28, 2010