

PUBLIC LAW BOARD NO. 7120

(BROTHERHOOD OF MAINTENANCE OF WAY
PARTIES TO DISPUTE: (EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated April 15, 2008, Mike McGowan, Engineer Program Construction, notified C. L. Dobbins, Jr. ("the Claimant") to attend a formal Investigation on April 29, 2008, in the Roadmaster's Office in Cumberland, Maryland, "to determine the facts and place your responsibility, if any, in connection with incident that occurred at approximately 1030 hours on Monday, April 7, 2008, when backhoe # EF 5627 that you loaded on trailer # R1627D on Thursday, March 27, 2009 at Hyman, MD was being unloaded from the trailer at Hancock, WV., by Mr. W. D. Mason, . . . the brake on left rear wheel of the backhoe locked-up causing the front of the machine to slide off the right side of trailer. When this occurred," the letter continued, "the front bucket of the backhoe struck and damaged the left front fender of section dump truck # CSX 70692."

The letter stated that the Claimant was "charged with failure to properly and safely perform the responsibilities of your position, creating an unsafe condition, carelessness, and failure to properly lock out equipment due to defects on the equipment, and possible violations of, but not limited to, CSX Operating Rules - General Rules A, F and L; General Regulations GR-2, and GR-14; as well as CSX Safe Way - General Rule GS-1,

GS-4, and GS-7.”

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant has been employed by the Carrier and its predecessor since 1978. On March 27, 2008, he held the position of Truck Driver and operated a dump truck. On that day and the previous two days his assignment was to operate a backhoe to load his dump truck with stone, take the stone to a crossing, and dump the stone. He would then go back for more stone and repeat the process. He transported the backhoe to the stone site and the crossing by means of a trailer that was attached to his dump truck. This required him to move the backhoe on and off the trailer twice a day. At the end of the day on March 27th, he left the backhoe on the trailer, which was parked in the Carrier's Cumberland Yard. The next day the Claimant started a different assignment which did not require him to use that backhoe.

The trailer remained in the Cumberland Yard until April 7, 2008, when W. D. Mason, a Truck Driver and Machine Operator, hauled the backhoe on the trailer from the yard to the Roadmaster's office in Hancock, West Virginia. The backhoe was to be used for loading stones in Hancock. In Hancock, while backing the backhoe off of the trailer, the left rear brake grabbed, but not the brake on the right side. This caused the front of the machine to swing and slide off the side of the ramp of the trailer. The front right side of the bucket on the backhoe hit a parked CSX dump truck, damaging the hood and the fender on the driver's side of the dump truck. Mr. Mason was not injured, and there was no damage to the backhoe except for some white paint from the dump truck that adhered to the front right side of the bucket.

Engineer of Program Construction Mike McGowan traveled to Hancock, West Virginia, to investigate the incident. He inspected the backhoe and found no logbook in the machine. He also tested the brakes, he testified, and found that "the left handle would grab but the right handle would not grab." According to Mr. McGowan, after doing extensive research he determined that Claimant Dobbins had parked the backhoe on the trailer in the Cumberland, Maryland, Yard on March 27th, where it sat idle in the parking lot of the Roadmaster's office until the new Truck Driver, Mr. Mason, took it down to Hancock, West Virginia for use.

Mr. McGowan called Claimant Dobbins, who verified that he had parked the backhoe on the trailer in the Cumberland Yard on March 27, 2008. Mr. McGowan asked

the Claimant if he had encountered any brake problem with the machine. The Claimant, Mr. McGowan testified, told him that there was a brake issue that came into play only when coming on and off the trailer. But for the purpose that the Carrier was using it for, digging off of a pile, the Claimant told Mr. McGowan, it never hurt the machine.

Mr. McGowan testified that CSX rules require that a machine's logbook be filled out on a daily basis. Prior to the first of the year, he stated, it had to be filled out on a weekly basis. The logbook, Mr. McGowan explained, reflects how the machine has been maintained and any problems that need to be fixed or conditions that make it unsafe to run. An operator, Mr. McGowan testified, is supposed to look at the logbook and make sure that it is safe to run when he goes to operate the machine. He stated that Mr. Mason did not have prior knowledge of the brake issue.

Mr. McGowan cited various rules that he believed the Claimant violated, including General Rules GR-14, which states, "Employees observing any condition that could endanger persons or property must: 1. Correct the condition, if feasible, or 2. If not feasible, the employee should report the conditions to the proper authority." The Claimant, Mr. McGowan testified, should have tagged the machine and made his immediate supervisor or the mechanic aware of the problem that had to be fixed.

Mr. McGowan testified that when a mechanic examined the backhoe the next day he found that the brake actuator did not work on the right side and had to be replaced. The left side did work. Mr. McGowan stated that he drove the backhoe himself in the

parking lot in his investigation and determined that the brake was in a failure mode, although, not being a mechanic, he did not know what caused the problem.

William David Mason testified that while unloading the backhoe from the trailer on April 7, 2009, one brake worked and the other did not work at all. The front end of the backhoe came off the trailer, he stated, and struck a dump truck. He did not inspect the backhoe on the trailer, he testified, because there is limited space there to move. He did not see a logbook in the trailer, Mr. Mason testified. There were no tags to identify any problem with the machine. Asked whether you are supposed to tag a machine if it has a defect, Mason stated, "That's what we're taught." After the backhoe hit the dump truck, Mr. Mason tagged the backhoe to indicate that there was a mechanical problem.

Claimant Dobbins testified as follows. He operated the backhoe for two or three days prior to March 27, 2008, for five or six hours a day. He was not aware of any brake problems with the machine. He did not see a logbook on the backhoe. He did not know that it was a FRA requirement for the backhoe to have a logbook. He has a logbook on his dump truck. He is Operating Rules and Safe Way Rules qualified.

In their telephone conversation [the Claimant's testimony continued], Mr. McGowan told him that there was an accident with the backhoe and asked him if there was any brake problem with the machine. He told Mr. McGowan, no, that you had to latch the two brake pedals together with the latch; otherwise it would throw you to one side or the other unless you hit both pedals at the same time. He loaded and unloaded the

backhoe twice a day and never had a problem.

Claimant Dobbins agreed with testimony given by Mr. Mason that there was a brake pedal on the right side of the steering column near the gas pedal, but stated that he did not use that pedal because it was so close to the gas pedal. He used his left foot, he stated, to operate both pedals on the left side at the same time. He indicated that he was not aware that the right brake pedal operated both brakes simultaneously.

The hearing officer asked the Claimant if it was his testimony that Mr. McGowan's testimony about their telephone conversation was totally inaccurate. He stated that Mr. McGowan misunderstood him, that he was telling Mr. McGowan that the latch was corroded and did not hook both brake pedals together; that if you hit the left or the right one, the backhoe would go from one side to the other. "It'll throw you," the Claimant clarified. "That's why you have to work both pedals at the same time because that latch is corroded."

The Claimant testified that he did a walk-around inspection of the backhoe on March 27, 2008. He checked the fluid levels on the backhoe, he stated. He did not notice anything out of the ordinary on the backhoe on March 27th, the Claimant testified. The Claimant stressed that his occupation as of March 27, 2008, was Truck Driver, operating a dump truck and other vehicles, and that the backhoe operation was an incidental part of his job, such as to load stone onto his dump truck. He stated, however, that sometime after March 27, 2008, he bid for and was awarded the job of Backhoe Operator and held

that position at the time of the hearing.

Following the close of the hearing, L. Moss, Director Program Instruction, by letter dated May 19, 2008, notified the Claimant that a review of the transcript and exhibits showed that he was “guilty of the infractions upon which you were charged and that your actions clearly violated” various rules. He was assessed “a thirty (30) day suspension that will be served as a fifteen (15) day actual suspension . . . with the remaining fifteen (15) as an overhead suspension.” The overhead suspension was to be in effect for one year from the date of the incident.

The Board believes that the evidence shows that the Claimant was negligent in failing to report the fact that the brakes on his backhoe were not working properly. By his own testimony, he was aware that if both brake pedals on the left side of the steering column were not operated simultaneously, the backhoe would lurch to one side or the other when the machine was being moved on or off of the trailer. The Claimant also admitted that the latch that joined the two pedals so that they could be depressed simultaneously was broken. He failed to report the problem in clear violation of General Rules GR-14, which states that employees observing any condition that could endanger persons or property must correct the condition, if feasible, or report the condition to the proper authority. The Claimant neither fixed the condition (which was not expected of him) or reported it (which was his duty).

The damage that resulted from the failure to report the problem with the brakes

was foreseeable. The Claimant should have known that after he left the backhoe in the Cumberland Yard on the trailer on March 27, 2008, someone else would be using the backhoe. This would require removal of the backhoe from the trailer. Unless the problem with the brakes was reported and fixed, whoever moved the backhoe off of the trailer would not know that it could lurch to the side and therefore likely would not take the necessary precautions to prevent such an occurrence. It should have been evident to the Claimant that anything near the backhoe when it veered to the side could be damaged, as in fact happened to the CSX truck that was damaged in the present case.

In the Board's opinion it was reasonable for the Carrier to consider the Claimant's failure to report the condition of the brakes on the backhoe to his supervisor or a mechanic, in clear violation of General Regulations GR-14, as the proximate cause of the damage to the CSX truck that occurred on April 7, 2008. The discipline administered for the violation was in line with the disciplinary progression provided for in the Individual Development & Personal Accountability Policy. The claim will be denied.

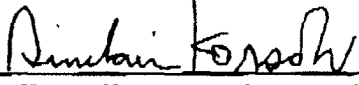
A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that

an award favorable to the Claimant not be made.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
June 17, 2009