Award No. 51
Case No. 51

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated September 22, 2008, the Roadmaster on the Garrett, Indiana, subdivision instructed P. L. Franks ("the Claimant") to attend a formal Investigation on October 7, 2008, at the CSX Division Office in Calumet City, Illinois, as principal, "to determine the facts and place responsibility, if any, in conjunction with the incident that occurred on August 25, 2008, at MP BI 140.59, number one track, on the Garrett Subdivision, which you were assigned the duties of repairing defective rails, returned the track to normal service while the rail at MP BI 140.59, number one track, was unsecured, resulting in a signal indication." The letter stated that the Claimant was "charged with violation of Rule 700, CSXT Maintenance of Way Instructions M016, and releasing track to service that was unsecured."

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.

On August 25, 2008, the Claimant, a 32-year employee of the Carrier and its predecessor, was foreman of a gang that was assigned to replace defective rail. His gang was working with a welding gang headed by Foreman Bill Whipple. In their morning job briefing, by telephone, the Roadmaster informed Foreman Whipple that he was to work with the crew headed by Foreman Frank. The Roadmaster told Foreman Whipple that the Claimant and his crew would cut rail for them between Ripley and Avilla and Foreman Whipple's men would weld up behind them. About 20 minutes later the Claimant told Foreman Whipple, in a face-to-face conversation, that the assignment had been changed and that the Claimant's team would cut rails between Ripley and Cromwell for Foreman Whipple's team to weld behind them. A job briefing was conducted between the Claimant and Foreman Whipple. In the job briefing, Foreman Whipple testified, it was discussed that "Perry Franks was going to cut in rails for our welders to cut in or weld in." In that same job briefing, according to Foreman Whipple's testimony, the locations where the Claimant's crew was to cut the rail, including MP 140.59, were also discussed (Tr. 40). Foreman Whipple had 704 authority for all of the track that had to be worked on and was in charge of the track with the dispatcher.

The Claimant and his crew proceeded to replace the first defective rail in Ripley, Indiana. The Ripley area was an interlocking that was called "the OS." The welding team was also at the site and helped the Claimant's team cut the rail and pull the spikes. When the new rail is to be welded in place, the rail cutting crew must leave a one inch gap at each end of the rail where the weld will be made. That was done at the first rail replacement. An alternative to welding is to drill bolt holes and install joint bars, which would be done by the rail cutting crew when there is no welding of the replacement rail. Before leaving the first work site the Claimant discussed with the welding crew that they

would follow behind and also do the welding at the next site.

The Claimant and his crew proceeded to the next site, which was at Albion, Indiana, at milepost 140.59, where a rail with a Sperry defect had to be replaced. The welding crew remained at the first site to weld in the replacement rail. The Claimant held a job briefing with his crew before beginning to work at the second site. The crew discussed that Foreman Whipple had received 704 authority and that Mr. Whipple had said that the first two rails they put in would be welded. The Claimant's crew then proceeded to replace the defective rail. As at the first site the crew left a one inch gap at each end of the rail for the welds.

The Claimant's crew then went on to the third site, about four miles west of the second site, to replace another Sperry defect. Foreman Whipple was present there, and the Claimant asked him if he (Mr. Whipple's crew) was going to weld in that rail. Mr. Whipple said, no, that there was not time. The Claimant's crew replaced the defective rail at that site, drilled the bolt holes, and applied the joint bars to the new rail, since it was not going to be welded in place. After that job was finished, which was the crew's last job for the day, the Claimant cleared the crew off the track. The Claimant testified that when you clear the track you are telling the employee in charge that you have done exactly what the job briefing said to do.

After the Claimant and his crew left the Ripley site for milepost 140.59 for Albion, the Roadmaster told Foreman Whipple that he should have his welders do all of the welds on the OS. There was no mention in that conversation that Foreman Whipple should inform the Claimant of the change in the welders' assignment. Foreman Whipple complied with the Roadmaster's instruction, but, as a result, no welder went to milepost 140.59 at Albion to weld the rail that the Claimant's crew had left with one-inch gaps at

either end of the rail. Nobody informed the Claimant of the change in assignment for the welders. There would have been no problem for his crew to drill the bolt holes and install the joint bars, the Claimant testified, had anybody told him that the welders had not welded the new rail that he and his crew had set at milepost 140.59. The 704 was lifted and the track returned to normal service although the rail at milepost 140.59 had not been secured in place either by welding or joint bars. The only protection for the track was a track light that came on at the location.

Following the close of the hearing, the Division Engineer, by letter dated October 27, 2008, informed the Claimant that based on the evidence "sufficient proof exists to demonstrate that you were guilty as charged and were in violation of the CSX Operating Rule 700 and Maintenance of Way Instructions M016." The Division Engineer assessed discipline of a five-day suspension from October 29, 2008, through November 2, 2008.

By letter dated November 21, 2008, the Organization, by its Vice Chairman, appealed the Division Engineer's assessment of discipline. The appeal was conferenced on December 17, 2008. By letter dated January 13, 2009, the Carrier, by its Director, Labor Relations, denied the appeal. The Carrier's letter denying the appeal stated that "the proper job briefing between both parties [Foreman Whipple and Foreman and Claimant Franks] did not occur because two bars were off and a track light was on." The letter also stated "Mr. Whipple testified that Mr. Franks never advised him that the rail at BI 140.59 was left unbarred." In support of denial of the appeal, the Carrier stated as follows:

> As a Foreman and with his years of experience, Mr. Franks should have confirmed with Mr. Whipple if the welds had occurred at 140.59. Mr. Franks stated that he could not see the welders but assumed that they were behind his team. When Mr. Franks cleared, he should have debriefed with Mr. Whipple what work had taken place. He did not. Mr. Franks stated that when he cleared, he was stating that he

had done what was required in the job briefing. However, as a foreman and not being able to see if the welds had been made, Mr. Franks bears a portion of the responsibility for this incident. As Rule 700 states, job briefings should be done before the work begins, each time the work plan changes, and after the work is completed. A proper job debriefing was not done.

* * *

In summary, because of Mr. Franks' years of experience with the Railroad, he was aware of the danger of leaving an unbarred rail. Since he was the foreman in charge of cutting in the rail, he should have ensured that the welders had welded at his specific locations. At the first location, it was obvious the welders were there because he was with them. At the second location, his team cut in the rail and then left to go to another location which was approximately five miles ahead. Mr. Franks admitted that he could not see the welders. Prior to clearing, he should have asked Mr. Whipple if the welds had taken place.

In a closing statement in his own behalf, the Claimant stated that he has been on the railroad for over 30 years and knows his job; that he has a good rapport with his crew; that he knows the importance of job briefing and that "we do things the right way." The situation of August 25 was not of his doing, he asserted, and had he been informed as he should have been of the changed instructions to the welders, he would have taken steps to make sure that the rail was secured. Communication, the Claimant declared, did not get relayed where it should have been.

The Organization, in its closing on behalf of the Claimant, argues, that Mr. Franks was not advised that the work plans had changed and that, as a result, he had to go back and drill bars on the new rail. It was the welding foreman's job, the Organization contends, to know what rails his welders were welding and what rails they didn't weld. The Organization notes that the welding foreman was charged in the incident and accepted a waiver and asserts that the Carrier has found who is culpable if it is looking to attribute culpability. The Organization requests that the Claimant's record be cleared.

In lieu of processing the appeal to the Third Division of the National Railroad

Adjustment Board, the Organization, with the agreement of the Carrier and authorization of the Claimant, listed the case with this expedited discipline board, Public Law Board No. 7120.

The charge letter states that the Claimant "returned the track to normal service while the rail at MP BI 140.59, number one track, was unsecured, resulting in a signal indication." The statement is incorrect because, as the Claimant testified, "I didn't put the track in service." (Tr. 69). Foreman Whipple, who had 704 authority, put the track in service.

The charge letter also charges the Claimant with violation of Rule 700. From the Roadmaster's testimony it is apparent that he relied on language in Rule 700 that states that a job briefing will be conducted 1. Before work begins, 2. Each time the work plan changes, and 3. After the work is completed. Similarly the Carrier's denial of the appeal faults the Claimant for not debriefing Foreman Whipple about what work had taken place. The Claimant testified, however, that it is common for him to have a job briefing when he works with Mr. Whipple but that he never debriefs at the end of the day as to what was done. (Tr. 64). He further testified that at the end of the day he is not required to have a debriefing. That testimony was not contradicted at the hearing. The only thing relied on in the Investigation as allegedly requiring a debriefing was the language of Rule 700. If read in its entirety, however, the language of Rule 700 relied on by the Carrier clearly does not require a debriefing in the circumstances of this case because, by its terms, it applies only "in connection with the operation of the hand-operated main track switch in non-signaled territory." The full language of that part of On-Track Worker Rule 700 states as follows:

Job briefings will be conducted in connection with the operation of the hand-

operated main track switch in non-signaled territory.

1. Before work begins.
2. Each time the work plan changes, and
3. After the work is completed.

There was no evidence that the work here involved the operation of the hand-operated main track switch. In addition, according to the evidence, a track light went on to indicate that the rail was not secure. That would show that this was not non-signaled territory.

In fact, Rule 700 supports the Claimant's testimony that at the end of the day he is not required to have a debriefing. The part of Rule 700 titled "Job Briefing" states, "Prior to starting a work period that will require an employee to foul a track, the employee-in-charge designated to provide on-track safety for all members of a group, or other designated employee, shall provide a job briefing. . . ." Rule 700 also states, "Each roadway worker shall again be so informed at any time the on-track safety procedures change during the work period." But there is nothing in Rule 700, except in connection with the operation of the hand operated main-track switch in non-signaled territory, that provides for a job briefing after the work is completed.[1]

The Board finds that the Claimant did not violate Rule 700, as charged and found by the Carrier. The Claimant complied fully with all instructions given to him by the Roadmaster and with the contents of the job briefing held between him and the welding foreman. He was not informed when the Roadmaster changed the assignment of the welders, causing them to weld at the OS interlocking instead of continuing on to milepost

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[1]General Safety Rule GS-3, Job Briefing, was not made part of this record, and the Board does not rely on that provision to any extent for its award in this case. Nevertheless the Board calls to the parties' attention that General Safety Rule GS-3 A, titled When to Conduct a Job Briefing, gives only four examples, none of which is "after the work is completed."

140.59 as originally scheduled and as agreed to in the job briefing between the Claimant and the welding foreman.

The Claimant's conduct cannot be considered a violation of CSXT Maintenance of Way Instructions M016 because the requirement to drill bolt holes and install joint bars applies only where the replacement rail is not welded in place. Otherwise the Claimant should also have been charged for the first rail replacement his crew performed on August 25th, where no joint bars were installed. There was no complaint with regard to the first rail replacement even though no joint bars were installed on that job.

The Claimant was in charge of the rail cutting crew and not of the welders. It was the welding foreman's responsibility to make sure that his crew performed all the work that he committed them to do or to take appropriate action in those cases where they were unable to do so. In the present case that would have included informing the Claimant that because of a change in assignment his (Mr. Whipple's) crew would be unable to weld the rail replacement at milepost 140.59. The welding foreman failed to do so, and he was charged and disciplined by the Carrier for his failure.

The Carrier charged the Claimant with violations of Rule 700 and Maintenance of Way Instructions M016 and found him guilty as charged. The finding of a Rule 700 violation appears to have been based on the belief that the Claimant was required to conduct a job briefing with the welding foreman after the work was completed, but there is no requirement in Rule 700 for such a job briefing in the circumstances of this case. M016 was not violated because joint bars are to be installed only when the new rail is not welded, and, in this case, the Claimant was expressly informed in the applicable job briefing that the new rail was to be welded. That instruction was never rescinded. Finally, the charge letter erroneously stated that the Claimant returned the track to normal

service while the rail at milepost 140.59 was unsecured. It was the welding foreman who returned the track to normal service, not the Claimant. For these reasons the Board finds that the Claimant was not guilty of the charges against him.

The Claimant is entitled to have his record cleared of any mention of the charges against him in connection with the present incident and to be made whole for any wages or other contractual or employment benefit lost by him as a result of the discipline assessed for the incident.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the date the signed Award is transmitted to the parties.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
December 28, 2009