

PUBLIC LAW BOARD NO. 7120

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

STATEMENT OF CHARGE:

By letter dated April 26, 2010, the Carrier directed R. D. Jolliff ("the Claimant") to attend an Investigation to be held on May 12, 2010, at the Carrier's Great Lakes Division office in Indianapolis, Indiana, to determine the facts and place responsibility, if any, in connection with an incident that occurred around 10:00 a.m. on April 12, 2010, near East St. Louis, Illinois, "on the St. Louis Subdivision, at or near CP HN, when a hy-rail vehicle, operated by you, failed to comply with the job briefing, which resulted in a collision with another vehicle." In connection with the incident the Claimant was "charged with failure to perform the responsibilities of your position in a safe and efficient manner, and with possible violation of CSXT Operating Rules, General Rules GS-3, GS-16, and CSXT Operating Rule, Section 7, pages 1 through 17, more particularly Rule 700, Job Briefing, and Rule 713 - when operating on track equipment."

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, whose service date is August 11, 1975, was employed by the Carrier at the time of the Investigation as a Track Inspector, headquartered in East St. Louis, Illinois. His supervisor was Roadmaster K. E. Robertson. Mr. Robertson had been reemployed by CSX Transportation six weeks earlier. He had previously worked for CSX for five years, during which time he held the positions of Assistant Roadmaster, Roadmaster, and Manager System Programs on System Production. He was then furloughed for a period of approximately two years and was rehired. Before coming to CSX he had worked 30 years on the Pacific Railroad.

Claimant Jolliff had been called out to clear debris from the tracks the night before and had had very little sleep when he reported for work the next morning on April 12, 2010. Roadmaster Robertson testified that he decided that because the Claimant was tired he would follow him in his own truck while the Claimant made track inspections that day and that this would serve as experience toward qualification as a Track Inspector for himself (the Roadmaster) since he had not yet been qualified to inspect.

The Roadmaster and the Claimant then did a job briefing in which they discussed how they would go down the track. They agreed that before stopping his hi-rail, the Claimant would call the Roadmaster over the radio and let him know that he was going to stop. Roadmaster Robertson completed the Job Briefing Form. On the part of the form headed Specific Hazards Identified, on the line for "Red Zones" he wrote, "Live tracks, stopping call ahead." On the line for "Follow Up Job Briefing" he stated, "After each EC1 and Interlock." Roadmaster Robertson testified, "We said going through the CP's that he would take care of both hi-railers through the CP's so both of us wouldn't have to announce."

After the job briefing the Claimant started down the tracks in his hi-rail vehicle, followed by the Roadmaster in his own hi-rail. The Claimant found track defects at two separate locations and notified the Roadmaster, who was following behind, before stopping at each of the locations. The Claimant repaired the first defect, with the Roadmaster serving as lookout, and took the second track out of service through the dispatcher. The Claimant then stopped at a diamond which he wanted to check to make sure that it had all of its bolts. Again he notified the Roadmaster that he was stopping. The Roadmaster told the Claimant to continue on east because they had to get clear of that track for a train and that they would come back and look at the diamond at a later date.

The Roadmaster testified as follows about what happened next. The Claimant and the Roadmaster were by the WAS, and the dispatcher came on the radio and asked Claimant Jolliff if he was ready to copy. The dispatcher started giving the EC-1. "I reached over and grabbed my EC-1 book and started to copy. Started to stop. And before I got stopped I ran into the back of Mr. Jolliff." They then finished with the EC-1 to get their track protection, after which they proceeded to the crossing to investigate the incident.

On cross-examination the Roadmaster described the incident as follows: "I picked up the EC-1 form and started to stop and started copying – the Dispatcher came on and started talking before I had the truck stopped and I wanted to make sure I got the order copied, so I just started copying." The Organization representative asked the Roadmaster, "When you're copying an order like that, are you allowed to be moving?" The Roadmaster answered, "No, you're not." The representative asked, "Is there a rule that says that?" The Roadmaster answered, "Yes, there is." The Roadmaster was disciplined

by the Carrier for his part in the incident.

The Carrier entered into evidence a copy of Rule 700, Job Briefing Responsibilities. Asked by the hearing officer to explain the significance of the job briefing rule, the Roadmaster stated that "part of the job briefing wasn't followed, which was failure to say that they were going to stop ahead of time. But he did prior, three other times. But the last time he failed to mention he was going to stop per the job briefing that we had." The Roadmaster explained on cross-examination, "The fourth time we stopped for the last EC-1, he failed to communicate that he was going to stop."

The Roadmaster added the following details concerning the incident:

We stopped at HN . . . and then we pulled across HN together at the diamond. We bunched up at the diamond like we talked in our job briefing. Went across the diamond, and then Mr. Jolliff pulled away, starting to hi-rail down the track. We got by and I was probably 400 to 500 feet behind him. And then that's when the Dispatcher came on and started giving the permit, and that's when the incident happened. And then Mr. Jolliff stopped, copied the EC-1.

The Organization representative asked the Roadmaster if Claimant Jolliff was copying the same EC-1 that he (the Roadmaster) was trying to copy. The Roadmaster answered:

"Correct. We was in two different vehicles, so I was trying to copy at the same time. Mr. Jolliff had stopped his truck, and then I started copying. But I did not stop my truck completely before starting to copy the EC-1. And that's when I ran into the back of his truck." The Roadmaster testified that the Claimant's brake lights were working properly.

Claimant Jolliff testified that he concurred with most of Roadmaster Robertson's testimony, but that his testimony would differ in that they were not acquiring a new EC-1, but rather that he (the Claimant) was reporting by the clearance point. Passing CP HN,

the Claimant stated, they were not acquiring a new EC-1. Instead, according to the Claimant, "I was reporting by the CP was my intention." In addition, the Claimant stated, "I instructed him [the Roadmaster] that I was going to the Dispatcher's channel to report by."

The Claimant testified that Roadmaster Robertson came on the radio and said that he was by the signal at WAS CP HN. The Claimant, according to his testimony, looked in his rearview mirror and confirmed that the Roadmaster was by the signal at WAS CP HN. "[A]t that time," the Claimant stated, "I told him I was going to go to channel 64 to ring up the Dispatcher and report by that signal." That clears the track behind them, the Claimant explained, and they were being rushed out of there by a train that was trying to occupy the track.

The Claimant testified that to get the dispatcher you have to change from channel 8, a road channel, to channel 64. The Claimant described the occurrence of the incident as follows:

When I toned up the Dispatcher, the tone came on. And then when the Dispatcher started to come on, that's when I stopped my vehicle. So I was of the understanding that when we talked to the Dispatcher – and I believed that he knew that when you talk to the Dispatcher and you write instructions down that the proper thing to do is to stop and do that task. So when the Dispatcher came on, I stopped. And then the next thing I know, I'm hit.

When he instructed the Roadmaster that he was going to the dispatcher channel, the Claimant testified, he did not state that he was going to stop.

The Claimant testified that the Roadmaster was 300 or 400 feet behind him, "a pretty good distance behind," when he (the Claimant) checked in his rearview mirror to

make sure that he (the Roadmaster) was at the interlock. He (the Claimant) "was slowly creeping along," the Claimant stated, "and I told him I was going to report and it wasn't until the tone came on and I thought I heard the dispatcher that I went ahead could stop my vehicle." Although he did not tell the Roadmaster that he was stopping, the Claimant testified, "I just assumed that once we talked to the dispatcher that that conversation requires us to stop. I figured he was aware of that." (Tr. 16-17).

The hearing officer asked the Claimant what had changed from the previous times in which they had stopped three times. The Claimant answered:

What changed was my assumption that Mr. Robertson would stop his vehicle when we made contact with the dispatcher to write instructions down. In my mind that was changed. That I really didn't think it would [be] necessary to tell him that I was stopping once I had told him I was going to 64 to report that I had toned up the dispatcher and he came on to talk with me. And give me those instructions.

The Claimant called attention to the line on the EC-1 form where he wrote that he was reporting east of the WAS CP HN on a main track with the time and the name of the dispatcher. The time of the conversation with the dispatcher was not entered, and the Claimant testified, "I was pretty shook up and I didn't even write the time in there, after the impact."

In response to questioning by his Organization representative, the Claimant clarified that on the three occasions when he told the Roadmaster that he was going to stop, the stopping was unrelated to communication with the dispatcher, and he stopped by his own choice to make an inspection or repair when he saw something wrong that needed fixing. On the fourth occasion, the Claimant testified, when he was rear-ended, the Roadmaster knew that he was talking to the dispatcher and had to report that they had

cleared a certain location. On that occasion, the Claimant stated, the Roadmaster should have known that he (the Claimant) was going to stop. In addition, the Claimant testified, "he [the Roadmaster] should have to stop to write the same instructions down. We both were working on the same EC-1 form. That was part of our job briefing."

After the close of hearing, by letter dated May 21, 2010, the Division Engineer-Great Lakes notified the Claimant of the Carrier's determination, upon review of the transcript and exhibits, that "the facts support the claim and confirm the charges placed against you were valid and proven." The letter continued that there was "sufficient proof . . . to demonstrate that you were guilty as charged and were in violation of CSXT Operating Rules and regulations." The penalty assessed was suspension from service for a period of 30 days beginning May 31, 2010, to and including June 29, 2010.

By letter dated and faxed to the Carrier on May 27, 2010, the Organization notified the Carrier that it was appealing the assessed discipline, requesting that the discipline be stayed pursuant to Rule 25 of the Agreement pending the appeal, and that the case be assigned for expedited handling to Public Law Board 7120.

It is the position of the Carrier that Claimant Jolliff, while operating his hi-rail vehicle, failed to comply with his job briefing to alert the trailing employee that he was stopping, and that this failure caused a collision. The Carrier contends that the Claimant was provided a fair and impartial investigation in accordance with the requirements of Rule 25 of the Agreement and that it produced substantial evidence that he was guilty as charged. Citing testimony by the Claimant at page 19 of the transcript, the Carrier argues that the Claimant admitted his guilt by owning that he failed to alert Roadmaster Robertson that he was stopping. The admission by itself, the Carrier asserts, was sufficient to satisfy the Carrier's burden of producing substantial evidence of guilt. The

level of discipline, the Carrier contends, was fully justified given the severity of the offense.

In its closing statement in behalf of the Claimant, the Organization asserts that the charge letter was misleading in that it implied that the Claimant's vehicle collided with another vehicle because of something that the Claimant did whereas, in fact, it was the Claimant's vehicle that was struck and rear-ended. On the issue of fault, the Organization notes that with regard to the first three times that the Claimant stopped, he told the Roadmaster beforehand that he was going to stop. On the fourth occasion, the Organization asserts, the Roadmaster very clearly heard the conversation that the Claimant was having with the dispatcher. That conversation, according to the Organization, was one that the Claimant was required to have with the dispatcher in order to inform the dispatcher that both he and the Roadmaster had "reported by," that is, cleared a particular location. The Roadmaster, the Organization argues, "knew full well he was going to stop and so therefore any failure to stop is clearly with, unfortunately, it's with Mr. Robertson." Claimant Jolliff, the Organization insists, did not do anything wrong. The Organization requests that the charges against the Claimant be dropped.

The charge letter states that the Claimant possibly violated four different rules, General Rules GS-3, GS-16, Operating Rule 700, Job Briefing, and Rule 713. The only rule introduced into evidence at the hearing, however, was Rule 700, Job Briefing. Nor has the Carrier explained in what manner it contends that the Claimant violated General Rules GS-3, GS-16, or Rule 13. None of those rules was mentioned in the Carrier's presentation at the hearing or in its decision letter. Nor was any of the rules read into the record or introduced into evidence. The Board finds that the Carrier has not established by substantial evidence that the Claimant violated either General Rule GS-13 or GS-16 or

Rule 713.

Rule 700 is entitled Job Briefing Responsibilities. The Claimant has been found guilty of failing to comply with the job briefing he and Roadmaster Robertson had in connection with inspection work he was performing on April 12, 2010, together with Roadmaster Robertson, who needed the inspection experience in order to become qualified as a Track Inspector. Specifically, as developed at the hearing, the Carrier is accusing the Claimant of failing to call the Roadmaster to inform him that he was stopping to communicate to the dispatcher that he and the Roadmaster had cleared a particular location.

The Organization contends that the Claimant did not fail to comply with the job briefing because the Roadmaster knew that the Claimant was going to stop. The Board believes that the Organization is correct. Not only did the Roadmaster know that the Claimant was going to stop, but the Claimant's testimony is uncontested that he told the Roadmaster "that I'm going to go to channel 64 and report by." (Tr. 14). The Roadmaster testified that the dispatcher wanted to be informed when the Claimant and he had gone by the location designated as "HN." (Tr. 4).

Channel 64 is the channel for communicating with the dispatcher, and the Roadmaster testified that he heard the dispatcher talking on the radio. (Tr. 6). From the Claimant's unchallenged testimony that he told the Roadmaster that he was going to channel 64 to "report by" and the Roadmaster's testimony that he heard the dispatcher talking on the radio, it is clear to the Board that the Claimant notified the Roadmaster that he was going to report to the dispatcher that they had gone by ("report by") location HN and that the Roadmaster then switched his radio to channel 64 (the dispatcher's channel). Thus the Roadmaster, who had previously been on channel 8, a road channel, so that he

could speak with the Claimant, who was also on channel 8, would not have switched to the dispatching channel except that the Claimant had told him that he was going to channel 64 to “report by.”

The Claimant testified that he and the Roadmaster were working from the same EC-1 form and that the Roadmaster would have to stop to write down the instructions received from the dispatcher the same as the Claimant was doing (Tr. 21). That was part of their job briefing, the Claimant stated. The Roadmaster’s testimony confirms the accuracy of the Claimant’s testimony. Thus the Roadmaster testified that he picked up the EC-1 form and started to stop and to copy when the dispatcher came on the radio and started talking (Tr. 8). The Roadmaster further testified that when you are copying what the dispatcher is saying, you are not allowed to be moving; that you are supposed to be stopped when you are copying a train order (Tr. 8-9).

From the testimony summarized in the preceding two paragraphs it is clear that the Claimant, prior to stopping to talk with the dispatcher, notified the Roadmaster that he was going to call the dispatcher. The testimony further establishes that after contact was made with the dispatcher, it would be expected that the dispatcher would come on the radio to give certain instructions which would have to be copied by both the Claimant and the Roadmaster; and that both employees would have to stop their vehicles in order to copy what the dispatcher said.

The Board finds that the evidence establishes that the conversation that the Claimant had with the Roadmaster by radio in which the Claimant said that he was going to go on channel 64 to “report by” was sufficient to notify the Roadmaster that the Claimant was going to stop soon to inform the dispatcher that they had cleared the HN location and to receive instructions from the dispatcher that had to be copied on the EC-1

form. The Claimant did not necessarily have to use the word “stop” to make the Roadmaster aware that he was going to stop.

If A tells B that he is going to do something that can only be done by stopping, then B should know that A intends to stop. Here the Claimant told the Roadmaster that he was going to “report by” the dispatcher regarding location HN. The Roadmaster admits receiving the information from the Claimant. When a “report by” is made to the dispatcher, the dispatcher gives certain instructions to the reporting employee which must be copied on the EC-1 form. The Roadmaster acknowledges that there is a rule requiring that someone in a vehicle copying the instructions must stop the vehicle.

The Roadmaster does not deny that the arrangement between him and the Claimant was that both of them would write the instructions of the dispatcher on their own EC-1 form. The arrangement makes sense because the Roadmaster was attempting to become qualified as a Track Inspector, and by duplicating what the Claimant was doing he would thereby gain the necessary experience for qualification. The Roadmaster testified that the dispatcher “came on the radio and asked Rod, or Mr. Jolliff [the Claimant] if he was ready to copy. And we started copying the form.” (Tr. 6, emphasis added).

The fact that the Roadmaster started copying the form confirms the testimony of the Claimant that they had agreed beforehand that the Roadmaster would copy onto the EC-1 form whatever the Claimant copied. The further fact that, by the Roadmaster’s own testimony, before giving any instructions, the dispatcher asked if the Claimant was ready to copy means that the Roadmaster had time to stop his vehicle before the dispatcher gave any instructions. Indeed the Roadmaster had plenty of time to prepare to stop because the Claimant had notified him beforehand that he was switching to channel 64, the dispatcher’s channel. And, as already noted, it was not permissible to copy anything on

the EC-1 form without first stopping.

This Board does not agree with the Carrier's contention, citing page 19 of the transcript, that the Claimant admitted his guilt. What the Claimant is stating at page 19 of the transcript is that he did not think it necessary to tell the Roadmaster that he was stopping because he (the Claimant) had told the Roadmaster that he was going onto channel 64 to talk to the dispatcher, who would be giving them instructions, and that this automatically required the Claimant to stop in order to receive the instructions. That is made crystal clear in the Claimant's further testimony at pages 20-21 of the transcript.

The accident happened not because the Claimant had failed to inform the Roadmaster that he was going to stop but because the Roadmaster failed to come to a complete stop before starting to copy what the dispatcher was saying. Thus, the Roadmaster testified, "The Dispatcher came on, started giving the EC-1. I reached over and grabbed my EC-1 book and started to copy. Started to stop. And before I got stopped I ran into the back of Mr. Jolliff." The Claimant cannot be blamed for the Roadmaster's failure to stop his vehicle before beginning to copy what the dispatcher was saying.

The Roadmaster acknowledged that the operator of a vehicle is not permitted to copy a dispatcher's instructions before stopping the vehicle. He made no claim that he was not aware of such a rule prior to the incident in question. By the Roadmaster's own testimony the dispatcher gave warning before giving any instructions. In addition, the Claimant had informed the Roadmaster beforehand that he was switching to the dispatcher's channel in order to "report by." The Roadmaster therefore had knowledge that the Claimant would be stopping but failed to take the proper precautions in the circumstances.

In addition, the Roadmaster's testimony that he reached for his EC-1 book when

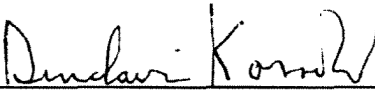
the dispatcher started talking corroborates the Claimant's testimony of their prior arrangement that the Roadmaster would copy the dispatcher's instructions on his own EC-1 form. The Claimant had no chargeable culpability in the collision that occurred. He acted in a responsible manner by notifying the Roadmaster that he was going onto channel 64 to "report by" and by participating in a thorough job briefing with the Roadmaster before starting the inspection work. He also adhered to the terms of the job briefing. The claim will be sustained. Any reference to the present discipline shall be removed from the Claimant's personnel record, and he shall be made whole for any losses suffered as a result of the discipline.

A W A R D

Claim sustained.

O R D E R

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
September 7, 2010