

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 October 13, 2010, S. W. Proctor, Manager Bridges, instructed Ms. M. R. Clewis ("the Claimant") to attend a formal Investigation to be held on October 25, 2010, in the CSX Engineering Office in Leland, North Carolina, "to develop the facts and place your responsibility, if any, in connection with information I received that indicated, while working as Bridge Tender on Job 5F5F, on the Wilmington Subdivision, at approximately 1055 hours, you allegedly failed to have an updated job briefing with train crew Y-120-30. Moreover, it is alleged that you also failed to secure the remote bridge and gave this train permission to cross the bridge when it was possibly not lined and locked."

In connection therewith she was charged by Manager Bridges "with failure to properly perform your duties, failure to work in a safe and efficient manner, endangerment of CSXT property as well as your fellow employees." The letter stated that the Claimant's "infractions appear to be in violation of, but not necessarily limited to, CSXT Operating Rules, General Regulations GR-3, 606 and 707 and CSXT Safeway Rule GS-1." The letter noted that the Claimant was "being withheld from service pending investigation." The hearing was moved up to October 21, 2010, at the same location.

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.

Claimant Marion R. Clewis has a service date with the Carrier of April 29, 1996. She has worked as a Bridge Tender during her entire period of employment with the Carrier. At all times here material she was stationed at the Navassa bridge, a drawbridge with railroad track over the Cape Fear River. In addition to tending the Navassa bridge, the Claimant was also responsible for the remote operation of the Hilton drawbridge, which carried railroad track over the North East Cape Fear River 2.3 miles distant from the Navassa bridge.

Until 2003 the Hilton bridge was tended on site around the clock by a Bridge Tender. In 2003 the bridge drive system had to be replaced, and new electric drive motors were installed to move the bridge. A PLC (Process Logic Controllers) computer system was included for automated operation of the machinery. The computer interface is displayed on an HMI (Human Machine Interface) panel or touch screen with icons on a graphic display whereby the operator can control the functions of the bridge machinery. The system also has a key switch enabling one to switch from computer to manual control. The Hilton bridge is equipped with a full set of relay logic for strictly manual operations should the high tech controls fail.

The Carrier operated the bridge locally for a period of time, testing the new controls, enhancing the graphic displays, and ensuring that the new system was operating properly. It was then decided to control the operation of the bridge from a remote location. To accomplish this all

that was necessary was to take the data displayed on the local HMI and send it to some other location. The remote location selected was the Navassa bridge, where the Bridge Tender would be assigned to operate the Hilton bridge in addition to the Navassa bridge.

Using a directional radio transmitter, the Carrier sent the data displayed on the local HMI screen at the Hilton bridge location to the bridge house at the Navassa bridge, where the same data were displayed on an HMI touch screen at Navassa. In addition, a group of cameras was installed at the Hilton bridge to send photographic images of up river, down river, and the operator's panel at the Hilton bridge to the bridge house at the Navassa bridge where the operator there would be able to view them as needed.

The U. S. Coast Guard must approve the remote operation of a bridge. One of the conditions for approval is that the status of the bridge be changed from normally closed to normally open for marine traffic. Therefore every time that a train needs to cross the Hilton bridge the remote operator at Navassa must click the appropriate icons or buttons on the HMI touch screen to close and lock the bridge so that the train can pass over the bridge. The Bridge Tender controls the opening and the closing of the bridge by touching the appropriate icons on the computer screen. He can select the icon for raising the bridge 15 degrees, for example, or another icon for fully raising it. Similarly he can select the icon for lowering the bridge. A question then appears on the screen, "Are you sure you want to do this?" and the operator must touch the button again to confirm the request.

If the request is confirmed, an automated sequence is started at the Hilton bridge that performs all of the operations, for example, of closing the bridge that the operator formerly did manually. A horn sounds the required number of times to indicate the bridge is closing. The brakes disengage. The motor starts and the bridge begins to move. It starts at a slow speed and ramps to a maximum speed that is adjustable in the programming. It stays at that speed until it reaches approximately 15 degrees where it hits an almost closed process switch. At that point the bridge slows down to creep speed and brings the leaf span all the way down into the stops where

it makes contact with the last two process switches, on either side of the bridge, tripping a mechanism to indicate that the bridge is fully closed.

The two process switches are in series, so there must be contact with both of them to trip the mechanism. This assures not only that the bridge is down fully, but that it is not twisted in some manner. When the fully closed process switches are engaged, the graphic panel displays changes on the HMI. This indicates that the hydraulic power plant is running. The purpose of the hydraulic power plant is to drive a lock pin into a saddle, located in the center of the leaf span underneath the bridge, to lock the bridge into place once the bridge is down and seated. When the bridge is fully locked, the panel changes once again both in color and in graphic display, indicating that the bridge is fully seated and fully locked.

If the locking process fails for any reason, the graphics panel will once more change colors and revert to the state of almost closed. If a predetermined time limit is exceeded in the closing and locking process, an alarm bar pops up on the screen, indicating that there has been a malfunction of some sort and that the bridge is not fully seated and locked. The bridge will stay in that condition until the Bridge Tender clears the alarm. Clearing is accomplished by touching the "Halt" button, which resets the process. This allows the Bridge Tender to select a new item, whether, for example, it be to complete the locking process or to raise the bridge to 15 degrees. The computer will then restart the automated sequence to accomplish the operation selected by the Bridge Tender.

The Claimant's supervisor is Stephen Proctor, Bridge Manager. His territory includes parts of Virginia, North Carolina, and South Carolina. The duties of a Bridge Tender, he testified, are to make sure the bridge is raised high enough for boat traffic when it is open; to make sure that the bridge is lined and locked for rail traffic to move across when it is lowered; and at all times to operate the bridge safely. Before taking a train across the Navassa or the Hilton bridge, the engineer must talk to the yardmaster to get his permission. The speed limit for trains is 10 mph, and the train operator must be able to stop the train within one-half the range of

vision.

The Carrier introduced into evidence an exhibit called Florence Division Timetable No. 6 effective July 1, 2010 . The timetable contains the following Wilmington Subdivision Special Instructions pertaining to the Hilton drawbridge at Milepost SE 363.1 and the Navassa drawbridge at Milepost SE 360.8.

The North East Cape Fear River (Hilton) drawbridge at SE 363.1 is remotely operated from the Cape Fear River (Navassa) drawbridge at SE 360.8. Trains will approach STOP signs, located approximately 100 feet from the end of the approach structures, prepared to stop, and will stop before reaching the STOP sign, unless granted verbal permission to proceed from the Navassa bridge tender at SE 360.8 or given a proceed signal with a green flag by day or green light by night.

Cape Fear River (Navassa Bridge) – Manned continuously. Trains will approach the derail located 250 feet south of the structure prepared to stop, checking the derail. Trains will stop before reaching the stop signs unless granted permission to proceed by the bridge tender, via radio or given a proceed signal with a green flag by day and a green light by night. The derail will be locked off rail when the drawbridge is down. The derail will be locked on the rail when the drawbridge is open or unattended.

On Wednesday, September 29, 2010, at around 11:10 or 11:15 a.m. Manager Proctor was informed by Roadmaster Robert Grooms that there had been an incident at the drawbridge in Wilmington, North Carolina, involving a train, the train crew, and the Bridge Tender. The Roadmaster did not have all of the details, and Mr. Proctor called the Bridge Tender, Claimant Clewis, to try to get the details of what happened. She told him that a train crew leaving Davis Yard office headed toward the ports called her at the Navassa bridge to get permission to go “all the way through.”

She gave the train permission to cross the Navassa bridge, and she then went to lower the Hilton bridge. While she was lowering the Hilton bridge the train was approaching the Navassa bridge. She then halted movement of the Hilton bridge to watch the train over the bridge at Navassa. Once the train had cleared the Navassa drawbridge she went back to complete the lowering of the Hilton drawbridge. When she thought that the Hilton bridge was lined and locked, she gave the train permission to proceed across the bridge. A while later the train crew called her back and said that the bridge was not lined and locked. Manager Proctor testified that

Claimant Clewis told him that she had to try twice to get the bridge down and locked up so that she could clear the train across the bridge.

Manager Proctor called Duos Engineering, the engineering company that services the computer system and automatic controls for the Hilton drawbridge, and Randall Graham, the project engineer responsible for the proper operation of the Hilton bridge. After Mr. Graham investigated the incident, Manager Proctor was instructed from headquarters in Jacksonville, Florida, to remove Claimant Clewis from service.

The hearing officer questioned Manager Proctor about the different rules cited in the charge letter. The Claimant, Mr. Proctor testified, violated the part of General Regulations GR-3, which states, “**GR-3** Employees must . . . 4. Report any violation of the rules or special instructions promptly to a supervising officer.” Rule 606 states:

606. Flag protection may be used to establish working limits in:

1. Emergency situations
2. Unusual circumstances, such as but not limited to an authority expiring and the train dispatcher cannot be contacted to secure additional authority.

Unless protection is being provided by other means, provide and maintain flag protection promptly in both directions for any unsafe condition related to track, bridge, culvert, or other structure.

Maintain the flag protection until either the:

1. Condition has been corrected.
2. Train dispatcher has assured that all affected trains have been notified.

Except when an emergency condition exists, do not perform any work requiring flag protection during dense fog or severe storms.

Rule 707 provides:

707. Long-Term Working Limits

The employee-in-charge must comply with the following when it becomes necessary to establish long-term working limits without the use of a flagman on one or more controlled tracks.

[Rule 707 continues with provisions regarding (1) Arranging for Dispatcher Message regarding the work to be performed, the date(s), beginning and ending times, signs to be

posted, and track limits; (2) Obtaining Dispatcher Bulletin containing the requested dispatch message before occupying the working limits; and (3) Posting Signs]

General Safety Rules GS-1 states:

GS-1. Safety Responsibilities

All employees governed by these rules, must ensure that:

- A copy of the CSX Safeway is accessible while on duty.
- Behavior in the workplace is civil and courteous.
- Local, state and federal laws and regulations that relate to job tasks are observed.
- Work areas and environment are clean, orderly and protected from controllable hazards.

Manager Proctor testified that the part of Rule 606 that was violated was the paragraph beginning “Unless protection is being provided,”; of Rule 707, the first paragraph; and of Rule GS-1, the part which reads, “Local, state and federal laws and regulations that relate to job tasks are observed.”

Manager Proctor testified that Claimant Clewis finished her shift on September 29, 2010, after he spoke to her about the incident and that she also worked her regularly scheduled shift on September 30th. She was removed from service before she could work an overtime shift that she was scheduled to work the evening of September 30th. His experience, Manager Proctor stated, has been that Duvos Engineering has been called on a weekly basis regarding some problem with the operation of the Hilton bridge. Up until this time, Mr. Proctor testified, he has “absolutely not” had any problems or issues with Ms. Clewis. He considers her a good employee, he stated. He is not aware of any prior discipline issues involving her.

Mr. Proctor testified that what he meant in the charge letter about Ms. Clewis’s failure to have an updated job briefing was “that she failed to have a self-job briefing when the job task changed[;] she did not have a job briefing with herself and make the checks . . . to make sure the bridge was lined and locked.” In his telephone conversation with Ms. Clewis, Mr. Proctor stated, she told him that she failed to secure the remote bridge and gave the train permission to cross the bridge.

Randall Graham, Manager of Electrical Standards, and the engineer who designed the automated control system for the operation of the Hilton bridge, was made aware of a possible problem with the controls of the Hilton bridge about 1:00 p.m. on the date of the incident. He called Ms. Clewis, he stated, to determine if there had been a malfunction in the computer control or the display graphics to cause her to tell the train crew that the bridge was locked when it really wasn't. Normally, he testified, he can see the control from his desk in Jacksonville, but "that particular day . . . they were working on the Citrix server and I wasn't able to actually watch the bridge tender."

In order to determine if there had been a malfunction in the controls, Mr. Graham asked Mr. Clewis to work with him to see if they could recreate the incident. She agreed, he testified, "that she would act like a sportscaster and just kind of give me a play by play." Mr. Graham had the Claimant raise the bridge to 15 degrees. The Claimant had informed Mr. Graham that the bridge had bounced that day, and she believed that it happened because of the heavy rains in the area. The weight of the leaf span, Mr. Graham explained, increases greatly when it gets wet. The Hilton bridge is a bascule bridge, and bascule bridges in general, he testified, bounce when they come down heavy. After the bridge was raised to 15 degrees, he had the Claimant hit the close button and announce for him the closing sequence as the bridge came down.

The bridge functioned fine with the graphics [Mr. Graham's testimony continued], and the controls were all working. The bridge did not bounce this time because the weather had improved considerably. When the bridge came down and hit the almost closed process switch, the graphics changed, indicating that the bridge was almost closed. The bridge continued to come down. He waited a few seconds, and then Ms. Clewis stated, "Okay, there's the fully seated process switch. I have 'fully seated' on the graphics panel now." The hydraulic plant was running, and they waited and waited. After a while he said, "Well this is taking a little longer than I expected." He asked Ms. Clewis if the hydraulics were still running. She said, yes. They speculated that there might be something wrong with the hydraulics power plant. Then she said,

“No, there it is; there it is. Lock pin engaged. My graphics are complete. The screen is green. The bridge is fully seated and locked.”

Mr. Graham testified that he then reminded Ms. Clewis that when she first told him of the incident, she said that when the train called her that the bridge was not fully closed, the hydraulics power plant was still running on the graphics screen. She acknowledged that she had said that. He said, “If the hydraulics power plant was still running, that means that the lock pin was never engaged and therefore you could not have had the screen turned green to tell you that the bridge was fully seated and locked.” She said, “Yes, you’re right.” Ms. Clewis added that at the time it happened she was so flustered that she was not really sure of what she had on the screen, but that he was right; that that was the way that the system worked.

Mr. Graham said to Ms. Clewis that the camera images showed that the bridge was not locked, that it was floating about three feet up. He asked her if she used the cameras. She said that you could not see with the cameras. He told her that with the cameras at full zoom, you can see the image that the bridge isn’t down. She said that she did not zoom in. He told her that it was understandable. “This thing has worked all these years,” he stated. “You’re accustomed to it functioning, and you don’t have to do that normally, so why would you?” He said that he fully understood why she did not zoom in on the bridge. Mr. Graham explained to Ms. Clewis that the important thing he wanted to know was whether the HMI touch screen told her that the bridge was fully seated and locked and that apparently there was no problem in the controls, and Ms. Clewis just got flustered. That was the end of his investigation, Mr. Graham testified.

Mr. Graham testified that a couple of hours after he completed his investigation he was asked to go to another office in the headquarters building where other officials of the Carrier inquired about the results of his investigation. After he explained his findings, one of the officials with whom he was meeting said, “Well then our hands are tied. If the HMI touch screen was not indicating that the bridge was seated and locked and she did give clearance to the train to go across, we have no choice. She must be taken out of service.”

James Harper, a retired Bridge Tender who formerly worked at the Navassa and Hilton bridges as a Bridge Tender, testified that he was called to go to the bridge by Mr. Proctor to see what kind of procedure they could come up with to prevent the same kind of incident from happening in the future. A Mr. Metcalf and Mr. Harper's son, who is a bridge mechanic, were also present in addition to Mr. Harper and Mr. Proctor. The meeting took place on Friday, October 1, 2010. One of the things mentioned in the meeting, Mr. Harper testified, was that it would be nice to have some signal at the bridge so that the train crew would know that the bridge is closed and locked. The date of the incident, September 29, 2010, Mr. Harper stated, it rained off and on all day. When it rains, Mr. Harper testified, sometimes the bridge will bounce back up when it goes down.

The Organization representative who had asked for Mr. Harper to be present at the Claimant's hearing, asked him if anything was said in their meeting about Ms. Clewis coming back to work. After the meeting, Mr. Harper testified, they were trying to figure out who was going to cover the shifts at the Navassa bridge. Mr. Proctor, Mr. Harper stated, made a call to a staff engineer to see if it was okay to work the bridge tenders 12 hours a day, seven days a week until Ms. Clewis got back. He heard the staff engineer say, Mr. Harper testified, that they were looking at putting her back to work about October 14th.

Ms. Marion Clewis, the Claimant, testified as follows. She has been a Bridge Tender for about 19 years, 14 years with the Carrier and just shy of five years on the Isabel Hunt bridge for the Department of Transportation of the state of North Carolina. Her regular work hours are 6:30 a.m. to 2:30 p.m. When she reports for work in the morning she does a job briefing with the Bridge Tender whom she is relieving. He catches her up on what trains are still out and if anything is wrong.

A train that wishes passage over the Navassa and Hilton bridges will call the Claimant and request passage. The Navassa bridge is normally down unless it is up for a boat or for greasing. If the bridge is down, she will tell the train that the bridge is lined and locked, the

derail is off, and that engine such and such number has permission to cross Navassa bridge. The train then heads toward the Hilton bridge, and she tells the train to stop and wait at the stop sign and that she will let the engineer know when she has the bridge lined and locked.

Claimant Clewis described the incident of September 29, 2010, as follows. CSX engine 2211 requested passage on Navassa bridge. The engineer said that he was going all the way, which meant that he would also have to cross the Hilton bridge. She gave permission to cross Navassa bridge. She then sounded five blasts on the siren, which was a security call for the river traffic that Hilton bridge was closing for rail traffic. She started the procedure for closing Hilton bridge. As the train reached the Navassa bridge, she halted the closing operation of the Hilton bridge to be able to watch engine 2211 as it crossed the Navassa bridge.

After clearing the train over the Navassa bridge at 10:31 a.m. [the Claimant's account continued], she again blasted the siren for the Hilton bridge five times to indicate that the bridge was closing. She resumed the closing of the Hilton bridge and monitored the screen and the camera until the Hilton bridge closed fully with the hydraulic mechanism running to drive the lock pin in. The camera showed that both motors were off, the brake was set, the degree zero, and the bridge fully closed with the hydraulic running.

At approximately 10:41 a.m. [the Claimant's account proceeded] engine 2211 requested passage on Hilton bridge. She checked the camera screen and gave engine 2211 permission to cross Hilton bridge. She saw engine 2211 coming on the screen, and she could tell that the train was slowing down or stopping. The train stopped, and the engineer called her on the radio. He asked her to recheck the bridge, stating that it looked like the bridge was up about two feet. She then rechecked the screen, and it showed that the lock pin was open, the bridge closed at 0 degrees, the motors off, brakes 1 and 2 set. However, the emergency brakes were still released, and the hydraulic motor was not running. Evidently, she figured, before the hydraulics could drive the lock pin into the saddle, the bridge spans, being heavy because of the rains, drifted up about two feet. But she could not see this on the camera screen. She then halted the bridge and

commanded it to close again. The lock pin would not engage. She had to open and close the bridge three times before the lock pin would drive into the saddle.

When the engineer called her at approximately 10:40 a.m., the Claimant testified, that was at least five minutes before he arrived at the Hilton bridge. It was then that she gave him permission to cross the Hilton bridge. At that time, she stated, she had already left the computer screen and sat down at the desk to watch the train on the camera screen. She was watching him on the camera, she testified, and could see him coming. The Claimant testified that she had started the closing of the Hilton bridge before engine 2211 arrived at the Navassa bridge and then halted the closing of the Hilton bridge when the train arrived at the Navassa bridge. She then went outside and waited until the train had crossed the Navassa bridge. She explained that she halted the closing of the Hilton bridge because the bridge tender must watch and keep check to see if any boats are approaching. Sometimes, she stated, little boats come, thinking that they will drive through, and it is therefore necessary to monitor the video cameras.

The Claimant testified that in the future she will not start the closing of the Hilton bridge until the train crosses the Navassa bridge. She explained that it takes 14 to 15 minutes for the train to get to the Hilton bridge from the Navassa bridge and that it takes only 7½ minutes to close the Hilton bridge. The maximum train speed allowed on that stretch of track is 10 MPH.

The Claimant testified that in her 14 years of employment with the Carrier she has had no prior discipline. The Claimant was asked, in light of the fact that the charge letter does not contain any date of the incident, how she was able to determine what date the Carrier was referring to when she received the letter. She testified, "Well I knew what day it happened." In reference to the allegation in the charge letter that she failed to have an updated job briefing with the train crew, the Claimant testified that she did have conversations with the train engineer and that she considered those conversations to be job briefings.

Addressing the allegation that she "failed to secure the remote bridge and gave this train permission to cross the bridge when it was possibly not lined and locked," the Claimant testified

that she did not do that purposely; that something happened that failed to lock the bridge in place as it has locked in place thousands of times previously. This has never occurred in the past, the Claimant stated. She concurred in the testimony of Mr. Graham that rain gets soaked into the ties to make the bridge heavier and to bounce when it comes down. She testified that she thought that that had something to do with the incident.

With regard to the allegation that she may have violated General Regulations GR-3 for failing to "Report any violation of the rules or special instructions promptly to a supervising officer," the Claimant testified, "I didn't report it to anybody then because . . . there was no loss, nobody was hurt." She did not violate Rule 606, the Claimant stated, because it was not necessary to provide any other protection than she was providing. With respect to Rule 707, the Claimant testified, she has never worked under Rule 707 in her 14 years with the Carrier. As for Rule GS-1, she feels that she had complied with that rule, the Claimant stated.

Permitted to make a closing statement in her behalf, the Claimant asserted that she has worked 14 years for the Carrier and has never taken a sick day or been late during that period of time. The Vice Chairman of the Organization, in his statement in behalf of the Claimant, pointed out that the charge letter does not give the date that the charging officer received the information that led to the charges and does not provide the date that the Claimant allegedly violated the rules. The Organization stresses that the Claimant has worked successfully for the Carrier for 14 years without incident. It notes that with training provided by CSX management, the Claimant performed her duties as Bridge Tender at the Navassa bridge and, using a computer and video camera, remotely controlled the Hilton bridge several miles away after the Carrier abolished the Bridge Tender positions there.

On September 29, 2010, the Organization asserts, there was an incident at the Hilton bridge caused by some kind of equipment malfunction in which there was no personal injury to the train crew or Ms. Clewis. There was no damage to the bridge, the track, or the train and, the Organization notes, minimal train delay. The delay, the Organization asserts, was caused by

equipment failure, not human failure. "Bottom line is," the Organization argues, "this incident did not merit Ms. Clewis from being removed from service to the railroad prior to the hearing."

The Organization asserts that the Individual Development & Personal Accountability Policy ("IDPAP") provides guidelines for discipline. However, the Organization argues, the progressive type of discipline of the IDPAP was "not applied whatsoever." The Carrier, according to the Organization, treated a simple fender bender as a head-on collision. The Organization finds especially disquieting the fact that the Carrier saw fit to withhold the Claimant from service prior to a hearing. The IDPAP policy, the Organization contends, was established to deal with such situations as the present case.

The Organization argues that the Carrier has failed to prove the charges placed against Ms. Clewis and requests that she be exonerated of the charges placed against her, that her disciplinary record be cleared, and that she be compensated for all lost wages beginning from when she was removed from service until she is placed back in service. The Organization also asserted that it was reiterating the objections raised at the beginning of the hearing. At that time the Organization argued that the charges against the Claimant should be dismissed for failure to notify her of the exact offense of which she was accused. In support of that request the Organization noted that the charge letter failed to state the date on which the alleged incident occurred.

Following the close of the hearing, the Carrier, by letter dated November 10, 2010, over the name of the Division Engineer, notified the Claimant of its decision in her case. The decision letter consisted of two paragraphs. The first paragraph repeated virtually verbatim the first paragraph of the charge letter, adding, however, a date for the alleged incident, which was omitted from the original charge letter. There was nothing in the first paragraph of the decision letter to indicate whether the letter writer agreed or disagreed with the charges. The second and final paragraph of the decision letter stated in full as follows:

As a result of the testimony and other evidence presented in this investigation, it has been

determined that you are in fact guilty of violating CSXT operating Rules, General Regulations GR-3. **Therefore you are assessed thirty (30) days actual suspension served October 1, 2010, to October 30, 2010.**

The Board will first rule on the Organization's argument that the charges against the Claimant should be dismissed because the Claimant was not notified of the exact offense of which she was accused. The Board has reviewed a number of awards where an argument for dismissal was made in behalf of the claimant for failure to notify the accused of the exact or the precise offenses of which he or she was accused. The Board notes that the deciding factor in those cases has been whether the accused was given sufficient information to prepare a defense to the charges.

See, for example, Second Division Award No. 11772 in which the organization argued "that the Claimant was not given proper notice and was denied a fair and impartial hearing as the charges were not definite and precise in that a time and date of alleged misconduct was not contained therein." The Board was not persuaded by the organization's argument, stating, "While the Board agrees that the Notice of Investigation on its face, was not definite or precise, nothing in the record indicated that the Claimant and his representative were not prepared to participate in the investigation." Similarly in the present case, whereas good practice requires that the date of an alleged incident be included in the charge letter (or notice of investigation), the Claimant admitted at the hearing that, although the charge letter gave no date for the alleged incident, "I knew what day it happened." (Tr. 77). It follows from her testimony that she was able to prepare a defense to the charges and assist her Organization representative to prepare for the hearing. The Claimant was therefore not denied a fair hearing in violation of Rule 25 (d) of the Agreement by the omission from the charge letter of the date of the alleged incident.

The Organization argues strongly that it was improper to withhold the Claimant from service. It contends that the IDPAP does not permit removal from service for the alleged offense

here involved. Supporting the Organization's position is the fact that none of the specific offenses listed in the definition of the term "Major Offense" in the IDPAP fits the present situation. Supporting the Carrier's position, however, is the fact that the definition of "Major Offense" in the IDPAP also includes the meaning "Other offenses deemed Major by Assistant Chief Engineer." It would not be far-fetched to argue that the act of a bridge tender in permitting a train to cross a bridge when it is not safe to do so is analogous to an employee-in-charge permitting a worker to occupy track when it is not safe to do so in violation of Rule 704 or Rule 707. Rule 704 and Rule 707 violations are included within the definition of Major Offense in the IDPAP.

There is, of course, another way in which this case could have been handled. Rule 25, Section 2 (a) states, "An employee may be disciplined by reprimand or suspension without a hearing, when the involved employee, his union representative, and the authorized official of the Company agree, in writing, to the responsibility of the employee and the discipline to be imposed." To this Board, Rule 25, Section 2 (a) appears an ideal way to deal with a case, such as the present one, where you have a long-term loyal and conscientious employee with an excellent attendance record and no prior discipline who unintentionally commits a serious offense under strong mitigating circumstances.

A possible reasonable resolution in this case would have been removal from service for a day with a Time Out to develop a thorough understanding on the part of the Claimant of why the offense occurred and to arrive at a corrective solution to prevent a repetition of the violation. In this connection the Board notes that by the next day after it occurred the Carrier had already completed its internal investigation of the incident. A five-day overhead recorded suspension effective for a one-year period could appropriately be included in the discipline to impress upon the employee the importance of being more careful in the future. Such a solution would not only have been a fair resolution tailored to the specific circumstances of the case but would have avoided, without sacrificing safety, the substantial overtime costs to the Carrier of working its

remaining Bridge Carriers seven days a week over a 30 day period to cover for the absent Claimant.

As a general rule, when dealing with a long-term, conscientious employee with an excellent work record the most important consideration is to make the employee aware of his or her violation and of how to prevent repetition in the future. Where a first offense is involved with no harm to person or equipment, a conscientious employee does not require a lot of discipline to impress on the employee the need for greater care and precaution in the future.

Rule 25, Section 2 (a), however, is a voluntary method of resolving a disciplinary dispute. It is not something that the Board can require the parties to utilize to resolve a dispute. In the present case the parties did not elect to avail themselves of that contract provision in dealing with this case.

Rule 25, Section 1 (b) provides: "When a major offense has been committed, an employee suspected by the Company to be guilty thereof may be held out of service pending his hearing and he shall be given written confirmation thereof." As discussed above, the parties disagree in this case whether a major offense was committed by the Claimant. In order to remove an employee from service for an alleged disciplinary offense, the contract requires that a major offense have been committed. Where a case comes before this Board involving an employee who has been held out of service on the basis of the alleged commission of a major offense and the Organization contends that no major offense has occurred, this Board must determine whether the record supports a finding of commission of a major offense.

The nature of this Board's role is that of an appellate tribunal. This Board's function in a discipline case is not to determine in the first instance whether an employee has committed a particular offense and the discipline to be assessed if a violation occurred. Rather it is to determine whether there is substantial evidence to support the Carrier's finding that the employee is guilty of a particular offense and whether the discipline imposed by the Carrier is appropriate under all of the circumstances of the case.

The Board has carefully reviewed the Carrier's decision letter dated November 10, 2010, in this case. There is no finding or determination in the letter that the Claimant was guilty of the offense of giving a train permission to cross a bridge when the bridge was not lined and locked. A Bridge Tender guilty of such conduct may well have committed a major offense. The Board, however, need not decide that issue in this case because, although the decision letter states that the Claimant was alleged to have permitted a train to cross a bridge that was not lined and locked, nowhere in the decision letter does it state that the Carrier or the Division Engineer determined that the Claimant was guilty of such conduct. The only thing that the decision letter states regarding the Claimant's guilt is that it was determined that she was "in fact guilty of violating CSXT Operating Rules, General Regulations GR-3."

Manager Proctor testified that the part of General Regulations GR-3 that the Claimant violated was item 4, which states, "Employees must . . . 4. Report any violation of the rules or special instructions promptly to supervising officer." The only violation regarding reporting that is listed in the IDPAP as a major offense is "Late reporting of injury." The Claimant's failure to report in the present case did not involve an injury, and this Board finds that the Claimant's failure to report the incident of September 29, 2010, was a violation of General Regulations GR-3, but that it, by itself, was not a major offense.

One might argue that if the Claimant was guilty of failing to report the September 29 incident, it follows that the incident did, in fact, occur. That is true, but the Organization argued vigorously that the incident was not the Claimant's fault, that the incident was caused by "equipment malfunction at the Hilton bridge. . . ." (Tr. 93). The evidence shows, moreover, that there was a malfunction of the equipment due to the ties on the bridge being saturated with water from heavy rains that day, causing the bridge to be extremely heavy and to bounce when it came down.

Given the absence of any mention in the decision letter that the Claimant was found guilty of giving a train permission to cross a bridge when it was not lined and locked, this Board

cannot assume that the Carrier did not accept the Organization's argument in the Claimant's defense. The Carrier could have found the Claimant innocent of the main charge but nevertheless guilty of a violation of Rule GR-3. In this connection the Board notes that the charge letter included an allegation of "failure to properly perform your duties." The Claimant's duties included the reporting of all incidents that might reasonably constitute a violation of the rules even if the Claimant believed that special circumstances existed to excuse her actions.

In the absence of a determination by the Carrier that the Claimant was guilty of permitting a train to cross a bridge that was not lined and locked, the Board finds that the Carrier has not established by substantial evidence that the Claimant was found guilty of a major offense. Absent a finding of guilt of a major offense and in the presence of the Organization's contention that a major offense was not committed, the record lacks a basis to support the Carrier's action in holding the Claimant out of service pending her hearing. In light of the fact that this was the Claimant's first offense during her employment with the Carrier, the Board concludes that the record does not support any greater discipline of the Claimant than a Time Out with a five-day overhead record suspension effective for a one-year period from the date of the incident. The Carrier shall make the Claimant whole for any greater discipline assessed against her in this matter. Back pay, however, shall be calculated on the basis of a 40 hour week, excluding overtime pay.

A W A R D

Claim sustained in accordance with the findings.

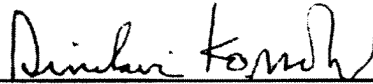
O R D E R

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

Page 20

Award No. 85
Case No. 85

effective on or before 30 days following the date the signed Award is transmitted to the parties.

A handwritten signature in cursive script, appearing to read "Sinclair Kossoff", written over a horizontal line.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
February 18, 2011