

AWARD NO. 125

Case No. 125

Organization File No. D70140010

Carrier File No. 2011-084467

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The discipline in the form of a thirty (30) day actual suspension imposed upon employee P. Legato for the alleged violation of CSXT Operating Rules - General Regulations GR-2, 700 and 704 for the alleged failure to conduct a proper job briefing before proceeding through the switch at the Auburndale Connection while operating Tamper MT 20056L between Carters Subdivision Mile Post A 840.9 and the Auburndale Connection Mile Post 841.3 on October 20, 2010 was unjust, unwarranted, excessive and in violation of the Agreement.
2. As a consequence of the Carrier's violation referred to in Part 1 above, the Claimant shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On October 20, 2010 Claimant was working as a tamper operator assigned to the T-1 tie team. Shortly after starting work, Claimant was informed that he was to move ("tram") the tamper to another location. Machine Operator Chris Evering was also instructed to move his ballast

regulator to this location. The two employees then operated their machines down the track with Evering in the lead. At the Auburndale Connection they encountered a switch that was lined for a diverging movement. Evering went through the switch onto the other track, and Claimant followed him. They did not have authority to occupy that track. After traveling for approximately .1 mile, they realized they were on the wrong track and reported the incident to B. L. Chatham, who then advised Roadmaster Ed Felton.

Claimant was subsequently directed to attend a formal investigation in connection with this incident. Following the investigation, Claimant was issued a thirty day suspension.

There is no question that Claimant operated his machine onto trackage that was beyond his authority. Claimant also acknowledged that he did not discuss the movement through the turnout with Evering when they first encountered the switch. According to Claimant, he simply followed Evering through the switch without knowing which way it was lined. He testified that he "presumed it was lined in the direction [he] was supposed to travel." He explained that he had never encountered a situation where the switches were not lined for the direction of his movement.

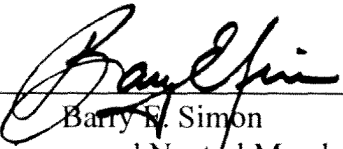
While Claimant asserted that he was not qualified over this territory, there is no indication he made that known to Felton or requested a pilot. The Board believes he did not know that he was going into the wrong track, but that does not exonerate him. If he was unfamiliar with the territory, it was even more important that he find out the proper route when encountering a diverging switch. It is also important for a machine operator to understand which direction a switch will take him. The Board does not need to discuss the serious implications of operating on trackage outside of one's authority.

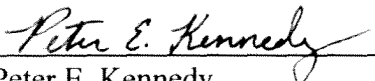
The Organization has argued that Claimant was denied a fair and impartial investigation because Roadmaster Felton had a conversation with the Hearing Officer. Apparently, Felton did not mention that Claimant was in violation of Rule GR-2(6) until he was recalled as a witness. Claimant's representative asked Felton if he had discussed the case with anyone. Felton acknowledged that he had done so with several people, including the Hearing Officer, but only before the investigation began.

One must understand the hearing process in this industry to know that such conversations are common. The Hearing Officer needs to have some idea as to the substance of the investigation. These conversations should allow the Hearing Officer to conduct the investigation in a fair and logical manner and should not be used to instruct witnesses as to what they should say. Inasmuch as there is no evidence that the conversation in question occurred during the investigation, we cannot draw the conclusion that Felton's additional testimony was elicited by the Hearing Officer in an *ex parte* communication.

Based upon the record before us, the Board finds that there was substantial evidence to support the Carrier's charge against Claimant. Occupying track without authority has been classified by the Carrier as a Major Offense. While a violation might warrant dismissal under the Carrier's Individual Development & Personal Accountability Policy (IDPAP), we are satisfied that the Carrier took into consideration Claimant's good work record over his eleven years of service by issuing him a thirty day suspension. We do not find that the discipline imposed was either arbitrary or unreasonable. There is no basis for us to modify the disciplinary action.

AWARD: Claim denied.


Barry N. Simon
Chairman and Neutral Member


Peter E. Kennedy
Employee Member


Robert Paszta
Carrier Member

Dated: January 7, 2013
Arlington Heights, Illinois