

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
) CASE NO. 168
) AWARD NO. 168
)
CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“We do hereby appeal the discipline (15 day suspension)¹ of employee C. J. Kincaid (573756 and hereinafter *Kincaid/Claimant*), as found within the above styled files. We ask that the appellant’s discipline be rescinded and that all notations regarding the alleged incident, the hearing and the discipline be removed from the Claimant’s record and that Mr. Kincaid be restored the standing within CSXT’s IDPAP held prior to the incident. This appeal seeks that the Claimant be made whole for all losses resulting from the Carrier’s instant actions. Such losses include time lost attending the hearing held on February 14, 2012, all time lost while suspended from active service, and all lost health and welfare equivalents and qualifying days for RRB, FMLA, IPA, DDO, and vacation qualifying purposes.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant was hired on August 8, 2004, as a train service employee. On February 6, 2012, he was issued written notice to report for a formal investigation on February 14, 2012, regarding a charge alleging that he submitted altered medical documentation for the purpose of excusing his absences. The investigation was conducted, as scheduled. On March 14, 2012, the Carrier found the Claimant guilty of the charge. The Carrier assessed discipline of a 30-day actual suspension for his violation of CSX Transportation Operating Rule GR-2.

The Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

¹ According to the record, the discipline assessed was a 30-day actual suspension.

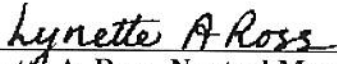
The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. Any criticism of the timeliness of the investigation notice is obviated by the Claimant's admission of wrongdoing, found on page 39 of the record.

Turning to the merits, there is substantial evidence in support of the Carrier's findings as to the Claimant's guilt of the charge and his violation of Operating Rule GR-2. The testimony and documentary evidence submitted by Crew Availability Manager A. M. Tingley constitute convincing proof that the doctor's notes submitted by the Claimant failed to establish he had been seen by a health care provider at the Athens Family Practice Walk-in Clinic, as alleged. Moreover, as noted above, a careful review of the Claimant's testimony convinces the Board that during the investigation he admitted to having mistakenly submitted the documents, and that his judgment had been clouded by personal issues he had been experiencing at the time. Therefore, notwithstanding the tangible evidence of wrongdoing submitted by Ms. Tingley, the Claimant's admission of guilt well satisfies the Carrier's burden of proof.

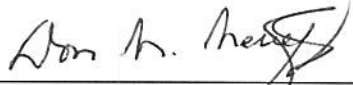
Turning to the level of discipline imposed, the Board finds that the Carrier's assessment of a 30-day actual suspension was warranted given the nature of the proven offense and the Claimant's disciplinary record at the time of the instant proven offense. The Board finds no mitigating circumstances justifying our modification or removal of the discipline. Consequently, the Board shall not disturb the Carrier's disciplinary assessment.

AWARD:

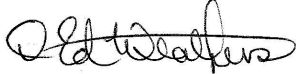
Claim denied.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION))
	v.	
CSX TRANSPORTATION, INC.)		CASE NO. 169)
		AWARD NO. 169)

STATEMENT OF CLAIM:

“Claim of Brian K. Reynolds (213336 and hereinafter *Reynolds/Claimant*) seeking the reversal of the thirty (30) day suspension wrongfully assessed as a result of the hearing held on May 2, 2012. This claim seeks relief for Mr. Reynolds in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant was hired on March 19, 2006, as a train service employee. On March 29, 2012, he was issued written notice to report for a formal investigation on April 5, 2012, regarding a charge alleging that he failed to verify his track list B-44 while building Train Q588-23, causing it to depart Radnor Terminal inaccurately. The incident occurred on March 23, 2012, at approximately 10:41 a.m., while the Claimant was assigned Y39322, in the vicinity of Bowl Yard.

The investigation was conducted on May 2, 2012. By letter dated May 30, 2012, the Carrier notified the Claimant that he was found guilty of the charge. The Carrier assessed discipline of a 30-day actual suspension for the Claimant’s violation of CSX Transportation Operating Rule GR-71, placing responsibility upon conductors for verifying switching lists and complying with instructions.

The record shows that the Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference. This matter is now properly before the Board for final and binding adjudication.

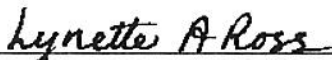
The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. With respect to the merits, the evidence and testimony show that the Claimant failed to properly verify the track list resulting in Train Q588-23 leaving Radnor Terminal with an extra car, DOWX79521, in the consist. The Claimant admitted in his testimony that he was responsible for verifying the track list and failed to ensure that the car was set out pursuant to the list. The Claimant testified that he was responsible for pulling the B-44 Track, and forgot to set out the car in question.

The Board finds that the Claimant's admission of his violation of Rule GR-71 is a matter of record. He testified that he had allowed stress from home to enter his work day and that in the future he would take care to not repeat such a mistake. The Claimant's representative argued that the Claimant had fully acknowledged his mistake, and asserted that the Claimant would henceforth exert every effort to ensure such an incident would not recur. According to the Organization, the Board should consider that as an employee who has handled thousands of cars without incident the Claimant freely admitted his mistake; hence the discipline assessed was harsh and excessive.

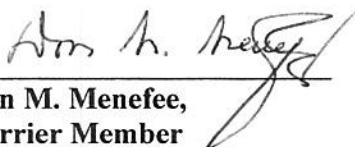
The Board concludes that the Carrier's finding of the Claimant's guilt of the charge is certainly supported by substantial evidence. As regards the level of discipline imposed, the Board finds that the Carrier's assessment of a 30-day actual suspension was warranted particularly in light of the status of the Claimant's disciplinary record at the time of the instant proven offense. The Board finds no mitigating circumstances justifying our modification or removal of the discipline. Consequently, the Board shall not disturb the Carrier's disciplinary assessment.

AWARD:

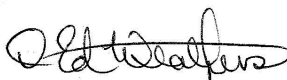
Claim denied.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
 v.) CASE NO. 170
) AWARD NO. 170
)
 CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“Claim of P.S. Webb (249680 and hereinafter *Webb/Claimant*) seeking the reversal of the thirty (30) day suspension wrongfully assessed as a result of the hearing held on March 27, 2012. This claim seeks relief for Mr. Webb in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant was hired on August 1, 2011, as a train service employee. On February 29, 2012, he was issued written notice to report for a formal investigation on March 7, 2012, regarding a charge alleging he was observed wearing a finger ring while working outside of an office environment. He also was charged with allegedly failing to make a safety stop prior to coupling into equipment, and, when coupling equipment, failing to ascertain that couplers and knuckles were properly positioned. The incidents occurred on February 26, 2012, at approximately 12:07 a.m., when observed by Carrier officials conducting rules compliance testing while the Claimant and crew were working C90326 in the vicinity of Milepost 0KC120.2.

The investigation was conducted on March 27, 2012. By letter dated April 26, 2012, the Carrier notified the Claimant that he was found guilty of the charges. The Carrier assessed discipline of a 30-day actual suspension for the Claimant’s violation of CSX Transportation Operating Rule 103A-9, concerning precautions taken during switching as regards the proper positioning of couplers and knuckles;

Safe Way Rule GS-6, paragraph C, Wearing Jewelry; and Safe Way Rule TS-16, Making a Safety Stop.

The record shows that the Organization promptly appealed the Carrier's disciplinary action and the parties discussed the appeal in conference. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. With respect to the merits, the parties acknowledge that at the time of the alleged offense, the Claimant admitted wearing a finger ring (his wedding ring). When the safety violation was called to his attention, the Claimant immediately removed the ring and placed it in his pocket. The Claimant apologized for wearing the ring and acknowledged his violation of Rule GS-6. According to the Organization, the Claimant was still a relatively new employee who had simply forgotten to remove his wedding ring before commencing work. In the Organization's view, counseling, which is typically administered for such a violation, and not discipline, was sufficient to address the situation.

As regards the other two charges, the Organization contends that the Claimant and crew were adamant they had made a safety stop in compliance with Rule TS-16 and that the Claimant had properly positioned the couplers when the crew made a runaround move, pursuant to Rule 103A-9. The Organization further asserts that the engine download failed to establish that the crew neglected to make a safety stop prior to the coupling, and avers that Rule 103A-9 did not require the Claimant to observe the coupling while on the ground.

The Carrier maintains that the credibility of the Carrier's witnesses who observed the activities of the Claimant and crew on the incident date was properly adjudged by the Conducting Officer. According to the Carrier, the testimony of the Carrier's witnesses was more believable than the testimony of the Claimant and crew. The Carrier asserts that such testimony and the engine download evidence constitute the necessary proof that the Claimant was observed to have been performing his duties in a manner that was contrary to the rules as they have been consistently applied.

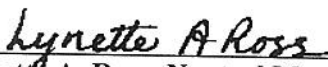
After careful study of the extensive record, the Board finds insufficient evidence in support of the Carrier's position that the Claimant failed to take necessary precautions to ascertain the coupler and knuckles were properly positioned to prevent damage to bypassed couplers, in violation of Rule 103A-9. The Claimant's testimony that he had checked the knuckle and alignment of the

couplers was not refuted, and there was no damage to equipment or bypassed couplers upon coupling. We further find that the C90326 Download Report failed to establish the Claimant's responsibility as regards the charge of allegedly failing to perform a safety stop prior to coupling to the cut of cars, in violation of Rule TS-16. There is no dispute that the Claimant was not operating the engine. Indeed, Engineer Tillet provided detailed testimony as to how he had been operating the engine and explained how he had made the safety stop. Therefore, based on the record properly before us, the Board concludes that the only charge that was proven in this particular case involving the Claimant was the Claimant's admitted violation of Rule GS-6, paragraph C.

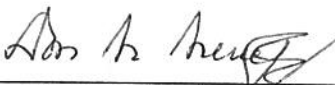
Turning to the quantum of discipline assessed, the Board finds that the 30-day actual suspension was excessive given our findings that two of the three charges were not proven, and a reprimand is sufficient discipline for the third violation at bar. Hence, we conclude that the discipline will be modified to a Written Reprimand, and the Claimant shall be compensated for all time lost as a result of having been assessed a 30-day actual suspension. The Carrier shall also modify the Claimant's record to reflect the Board's findings and modification of the discipline.

AWARD:

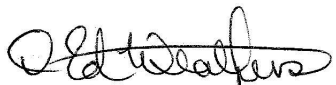
Claim sustained in accordance with the Findings. The Carrier is ordered to comply with this Award within 30 days of its date.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)	
)	CASE NO. 171
v.)	AWARD NO. 171
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

“Claim of L.G. Baginski (213570 and hereinafter *Baginski/Claimant*) seeking the reversal of the thirty (30) day suspension wrongfully assessed as a result of the hearing held on March 7, 2012. This claim seeks relief for Mr. Baginski in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

On March 7, 2012, the Claimant attended a formal investigation to develop facts and determine his responsibility in connection with an incident that occurred on December 31, 2011, at approximately 3:30 a.m., while working as the foreman on assignment Y31030 in the vicinity of the Tote Ramp (T2). The Claimant was charged with allegedly failing to ensure his train was stopped prior to shoving over a derail and blue flag.

By letter dated April 5, 2012, the Carrier informed the Claimant that the evidence adduced on the investigation record established his guilt of the charge. The Carrier assessed discipline of a 30-day actual suspension for the Claimant’s proven violation of CSX Transportation Operating Rule 46, requiring trains operating on other than main or signaled tracks to move at a speed that will permit stopping within one-half the range of vision, short of a derail, and General Rule 102, Blue Signal Display, prohibiting rolling equipment from passing a blue signal.

The Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

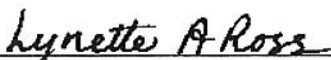
The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. On the merits, the Carrier's findings that the Claimant was guilty of the charge are supported by substantial evidence. There is no dispute that while riding a cut of cars in a shoving move to spot for air at the compressor on the north end of Tote 2, the Claimant felt a bump, told the engineer to stop, and discovered they had operated over the derail, causing damage to the blue flag.

As regards the level of the discipline imposed, the Board finds that the assessment of a 30-day actual suspension was excessive given the totality of the circumstances and the Claimant's record at the time of the instant offense. It is undisputed that at the time of the incident, the location where the crew had been operating was suddenly beset by dense fog and that the Claimant and crew had undertaken two job briefings as a result. According to the Carrier, the weather circumstances did not relieve the Claimant of his responsibilities under the rules. The Board finds that although the Claimant and crew had taken precautions to perform their duties safely, the Carrier's position that the Claimant should have walked ahead of the movement instead of riding the point of the shove given the sudden onset of poor visibility cannot be disputed by this Board.

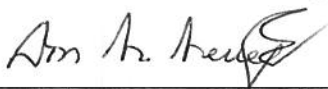
Given the totality of the circumstances, it is the Board's determination that modification of the discipline is warranted especially given the Carrier's stance that discipline under the IDPAP should be progressive and corrective. Therefore, we rule that the discipline shall be reduced to a 15-day actual suspension, again, given all of the circumstances. The Carrier shall amend the Claimant's disciplinary record accordingly, and shall compensate him for lost time beyond the 15-day suspension upheld by this Board, pursuant to the provisions of the governing Collective Bargaining Agreement.

AWARD:

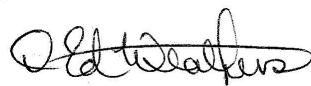
Claim sustained in accordance with the Findings. The Carrier is ordered to comply with this Award within 30 days of its date.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
 v.) CASE NO. 173
) AWARD NO. 173
)
 CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“Claim of D.A. Baker (246846 and hereinafter *Baker/Claimant*) seeking the reversal of the fifteen (15) day suspension wrongfully assessed as a result of the hearing held on December 28, 2011. This claim seeks relief for Mr. Baker in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant entered the Carrier’s service on March 28, 2011, and had nine months of service at the time of the incident that gave rise to the instant dispute. On December 28, 2011, he attended a formal investigation to develop facts and determine his responsibility, if any, in connection with a charge alleging his failure to be at, on, or ahead of a leading movement after coupling five cars into 20 cars on Track N11 and shoving the track clear. The incident occurred on October 30, 2011, at approximately 5:20 p.m., while the Claimant was assigned as the conductor on Train Q59629, in Howell Yard, Evansville, Indiana.

By letter dated January 27, 2012, the Carrier informed the Claimant that the evidence adduced on the investigation record established his guilt of the charge. The Carrier assessed discipline of a 15-day actual suspension for the Claimant’s proven violation of CSX Transportation Operating Rule 103, Shoving or Pushing Equipment at any Location.

The Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

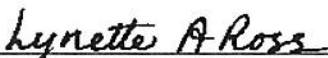
The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. On the merits, the Carrier's finding that the Claimant was guilty of the charge is not supported by substantial evidence. According to the testimony, only one of the two Carrier officials who had been observing the Claimant as he performed his duties was actually present at the investigation. The testimony of the sole witness present at the investigation is not sufficient to overcome the Claimant's testimony that he had begun walking toward the south end of the cars to be shoved so that he could protect the movement and that the cars had moved only about 100 feet, or two car lengths, before the supervisors directed that the move be stopped. The Carrier's witness testified that the Claimant was 10-12 car lengths away from the rear of the train and could not have been able to determine if there was sufficient room in the track to hold the equipment being shoved.

However, as the Organization has argued, the Carrier has failed to establish by the necessary evidence the Claimant's violation of Operating Rule 103. The Claimant's task was to supervise a shove of 25 cars to the clearance point. The testimony shows that the length of track was sufficient to accommodate the 30-car cut. Further, there is absolutely no evidence that the Claimant failed to meet all four exceptions found in Rule 103 or failed to make a positive determination that the route was clear as required by the rule. Evidence is lacking in proof of the charge that the Claimant failed protect a shove move covering the entire distance to the clearance point as the charge notice alleged. The shove was barely underway when the supervisors radioed the engineer to stop the movement. In effect, the Claimant had no chance to demonstrate his compliance with Rule 103.

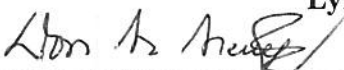
Therefore, the Board holds that the Carrier's disciplinary action must be overturned. The Board rules that the Carrier shall expunge the discipline from the Claimant's record and shall amend his record to reflect the Board's removal of the discipline. The Claimant shall be entitled to payment in accordance with the terms of the governing Collective Bargaining Agreement for all lost time and other compensation in connection with the Carrier's disciplinary assessment.

AWARD:

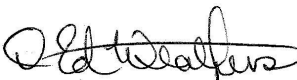
Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
 v.) CASE NO. 174
) AWARD NO. 174
)
CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“We do hereby appeal the discipline (30 day suspension) of employee J.O. Foster (654040 and hereinafter *Foster/Claimant*), as found within the above styled files. We ask that the appellant’s discipline be rescinded and that all notations regarding the alleged incident, the hearing and the discipline be removed from the Claimant’s record and that Mr. Foster be restored the standing within CSXT’s IDPAP held prior to the incident. This appeal seeks that the Claimant be made whole for all losses resulting from the Carrier’s instant actions. Such losses include time lost attending the hearing held on February 18, 2012,¹ all time lost while suspended from active service, and all lost health and welfare equivalents and qualifying days for RRB, FMLA, IPA, DDO, and vacation qualifying purposes.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant entered the Carrier’s service on May 4, 2003. On February 8, 2012, he attended a formal investigation to develop facts and determine his responsibility, if any, in connection with a charge alleging his failure to be at, on, or ahead of a shoving move and inability to make a visual determination there was sufficient room in the track and there were no conflicting movements. The Claimant was also charged with allegedly losing sight of his trainee, allowing the trainee to direct the shove movement. The incident occurred on January 4, 2012, at approximately 11:10 p.m., while the Claimant was assigned as the conductor on Train Q59604, in Howell Yard, Evansville, Indiana.

By letter dated March 7, 2012, the Carrier informed the Claimant that the evidence adduced on the investigation record established his guilt of the charge.

¹ According to the record, the investigation was held on February 8, 2012.

The Carrier assessed discipline of a 30-day actual suspension for the Claimant's proven violation of CSX Transportation Operating Rule 103, Shoving or Pushing Equipment at any Location.

The Organization promptly appealed the Carrier's disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. On the merits, the Carrier's finding that the Claimant was deserving of discipline is not supported by substantial evidence.

According to the record, upon arrival of Train Q59604 via the Cutoff Main, the Claimant was instructed by the yardmaster to shove 15 cars onto Track One. The Claimant testified without contradiction that he had made a visual determination that Track One was clear and had determined there were no intervening switches, derails, or crossings. After a job briefing with the crew, the Claimant instructed his trainee, Mr. Martin, to protect the shove and at all times remained in radio communication with Martin. The Claimant testified that in order to ensure the move was properly protected, he radioed Martin and asked him if the route was clear. Martin responded that a Simulated Obstruction Device (SOD) had been placed in the track. Martin stopped the movement and no incident occurred.

The Board understands that Rule 103 specifically provides that "a crew member or other qualified employee" must be in position to protect equipment when shoved or pushed at any location, and, as the Carrier asserts, as a trainee Mr. Martin was not qualified when the Claimant directed him to protect the 15-car shove into Track One. However, the Claimant testified without refutation that he had not been instructed on how to train Martin. The Claimant testified that, pursuant to Rule GR-55, he had conducted a job briefing with his crew and that after he had ascertained that Track One was clear, he had allowed Martin to protect the shove so that Martin might gain hands-on experience. The Board finds that although a technical violation of Rule 103 may have occurred, the circumstances as a whole do not warrant disciplinary action against the Claimant. Again, the record makes plain that the Claimant was communicating with Martin and actively supervising Martin while Martin was positioned on the ground watching the movement.

Therefore, the Board holds that the Carrier's disciplinary action must be overturned. The Board rules that the Carrier shall expunge the discipline from the

Claimant's record and shall amend his record to reflect the Board's removal of the discipline. The Claimant shall be entitled to payment in accordance with the terms of the governing Collective Bargaining Agreement for all lost time and other compensation in connection with the Carrier's disciplinary assessment.

AWARD:

Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.

Lynette A. Ross
Lynette A. Ross, Neutral Member

Don M. Menefee
Don M. Menefee,
Carrier Member

O. Ed Weathers
O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
) CASE NO. 175
) AWARD NO. 175
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)
CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“Claim of J.A. Woodward (609669 and hereinafter *Woodward/Claimant*) seeking the reversal of the fifteen (15) day suspension wrongfully assessed as a result of the hearing held on March 27, 2012. This claim seeks relief for Mr. Woodward in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant entered the Carrier’s service on December 9, 1977. On March 27, 2012, he attended a formal investigation to develop facts and determine his responsibility, if any, in connection with charges that he allegedly attempted to contact the dispatcher on Channel 84 while directing a shoving movement and failed to tie and test hand brakes on equipment before leaving it unattended. The incident occurred on February 28, 2012, at approximately 9:15 p.m., while the Claimant was assigned as the conductor on H77128, working in the vicinity of Spruce Pine, NC.

By letter dated April 26, 2012, the Carrier informed the Claimant that the evidence adduced on the investigation record established his violation of CSX Transportation Operating Rule 103-D, Securing Equipment. The allegation of the Claimant on Channel 84 attempting to talk to the dispatcher while directing a shove was not proven at the hearing, and the Claimant was not disciplined for that alleged infraction. The Carrier assessed discipline of a 15-day actual suspension for his breach of Rule 103-D.

The Organization promptly appealed the Carrier's disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. On the merits, the Carrier's finding that the Claimant was guilty of the charge of allegedly failing to secure equipment is not supported by substantial evidence. The testimony shows that the Claimant and Engineer M. A. Hopson shoved five cars and two engines to a point of clearance on the work track at Spruce Pine, in the vicinity of the crossovers near the yard office, or shack, in order to allow other traffic to pass on the main track. Three management employees conducting operational testing observed the crew's activities, and determined that the equipment was improperly secured with only two engine brakes applied and no hand brakes applied to any of the cars.

According to the record, after observing the alleged violation of Rule 103-D, no management employee directed the Claimant to test the hand brakes or secure the cut with additional hand brakes. Furthermore, there is no dispute that the engines remained attached to the cars at all times, and that the crew had no intention of detaching the cars from the engine. The record does indicate that the crew members entered the station at Spruce Pine to ask the dispatcher when they would be able to re-enter the main track. However, the Claimant testified without contradiction that he was never more than 25 feet from the train.

As the Organization has argued, Rule 103-D begins with the statement that "Air brakes must not be depended upon to hold equipment when the engine is detached." Again, there is no dispute that the engines remained attached to the cars, and that two engine brakes were applied to the equipment. Given the totality of the circumstances, the Board finds that the Carrier has failed to establish by the necessary evidence the Claimant's violation of Operating Rule 103-D. According to the Carrier, the only matter under investigation was the Claimant's failure to secure equipment left unattended, *i.e.*, Rule 103-D.

Furthermore, as the Organization argued on the property, the hearing officer's statement found on page 29 of the investigation record also supports the Organization's position that the Claimant did not violate Rule 103-D. The hearing officer's statement to the Claimant's representative, P. E. Terry, reads as follows:

And Mr. Terry so that you understand and following along with what I'm going along with here; the 2 handbrakes left on a cut

regardless of whether it's the engines or the cars is the same as a standing cut left alone, regardless.

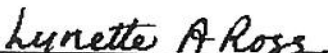
So the 2 engines are considered along with it, when it's left standing...

The record makes plain that the crew tied the brakes of the two engines and five cars shoved onto the work track at Spruce Pine. The crew had been directed to shove the equipment on the work track and to store it there until the dispatcher authorized them to re-enter the main track with the engines and cars. Based on the totality of the evidence of record, the Board finds that the Carrier failed to establish by the necessary proof that the Claimant failed to secure the equipment according to Rule 103-D. Therefore, we hold that the Carrier's disciplinary action must be overturned.

Accordingly, the Board rules that the Carrier shall expunge the discipline from the Claimant's record and shall amend his record to reflect the Board's removal of the discipline. The Claimant shall be entitled to payment in accordance with the terms of the governing Collective Bargaining Agreement for all lost time in connection with the Carrier's disciplinary assessment.

AWARD:

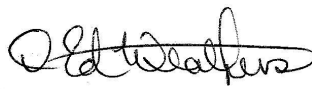
Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
 v.) CASE NO. 176
) AWARD NO. 176
)
 CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“Claim of L.G. Mcatee (376015 and hereinafter *Mcatee/Claimant*) seeking the reversal of the thirty (30) day suspension wrongfully assessed as a result of the hearing held on September 12, 2012. This claim seeks relief for Mr. Mcatee in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant was hired on February 21, 2000, as a train service employee. On August 7, 2012, he was issued written notice to report for a formal investigation on August 14, 2012, regarding a charge alleging that he failed to keep an accurate list while building Train Q685-01, causing it to depart Radnor Terminal inaccurately. The incident occurred on August 1, 2012, at approximately 12:10 a.m., while the Claimant was assigned Y9101, in the vicinity of Bowl Yard.

The investigation was conducted on September 12, 2012. By letter dated October 12, 2012, the Carrier notified the Claimant that he was found guilty of the charge. The Carrier assessed discipline of a 30-day actual suspension for the Claimant’s violation of CSX Transportation Operating Rule GR-71, placing responsibility upon conductors for verifying switching lists and complying with instructions.

The record shows that the Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. With respect to the merits, evidence consisting of the Train Accuracy Report for Train Q685-01 (CSX Exh. 2) shows Train Q685-01 leaving Radnor Terminal with one extra car, SOU 527574, and car CSXT 507517 missing. According to the Carrier, the Claimant pulled the cars for Train Q685-01, which departed the terminal as shown in CSX Exhibit 3, the "Verification Train List Detail, Train/Job ID: Q68501" with car SOU 527574 in the 41st position and CSXT 507517 not verified.

According to documentary evidence entered into the record as CSXT Exhibit 4, pages 1 through 4, depicting the cars located on Tracks B49, B40 and B33 which the Claimant switched to Track C17 (CSX Exh. 6), the missing car, CSXT 507517, was in the second position on Track C17 and the extra car, SOU 527574, did not appear anywhere on Tracks B49, B40, B33, or C17. According to the testimony of Trainmaster B. Stone, the Claimant erroneously verified Track C17 as correct.

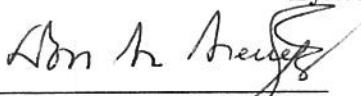
Rule GR-71 states, "Conductors are responsible for verifying track list furnished for switching and complying with switching instructions. Instructions concerning yard inventory must be complied with." The documentary evidence entered into the record establishes by substantial evidence the Claimant's responsibility for Train Q685-01 leaving Radnor Yard inaccurately. The fact that car CSXT 507517 was eventually found in Track B41 and properly departed on Train X592-02, did not relieve the Claimant of his responsibilities under Rule GR-71. The documentary evidence well shows that Train Q685-01 left with one extra car, SOU 527574, in the consist.

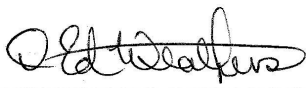
As regards the level of discipline imposed, the Board finds that the Carrier's assessment of a 30-day actual suspension was warranted particularly in light of the status of the Claimant's disciplinary record at the time of the instant proven offense. The Board finds no mitigating circumstances justifying our modification or removal of the discipline. Consequently, the Board shall not disturb the Carrier's disciplinary assessment.

AWARD:

Claim denied.


Lynette A. Ross, Neutral Member


Don M. Menefee,
Carrier Member


O. Ed Weathers,
Employee Member

Dated: 05/07/2014

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)
)
 v.) CASE NO. 177
) AWARD NO. 177
)
CSX TRANSPORTATION, INC.)

STATEMENT OF CLAIM:

“Claim of D.K. Higgins (378067 and hereinafter *Higgins/Claimant*) seeking the reversal of the twenty (20) day suspension wrongfully assessed as a result of the hearing held on March 6, 2012. This claim seeks relief for Mr. Higgins in the form of his record being cleared of the incident and his being made whole for all wages and benefits (H&W, RRB, FMLA, and Vacation credits, IPA and DDO qualifications) lost as a result of his attending the hearing as directed and while serving the suspension assessed as a result thereof.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

The Claimant entered the Carrier’s service on July 24, 2000. On March 6, 2012, he attended a formal investigation concerning charges alleging his failure to make certain there was nothing in the switch points that would interfere with its operation prior to operating the switch and his failure to ensure that the switch points fit properly after operating the switch located in the vicinity of Milepost Z-95, Carter Yard. The alleged incident occurred on February 5, 2012, at approximately 5:15 p.m., while the Claimant was assigned as the switchman on assignment Y15005. On April 5, 2012, the Carrier found the Claimant guilty of the charges and assessed discipline of a 20-day actual suspension for his violation of CSX Transportation Operating Rule 104-C and Safe Way Rules GS-18 and TS-7.

The Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully studied the entire record properly before us. We find no basis for setting aside the discipline on procedural grounds. With regard to

the merits, we find that the Carrier's determination as to the Claimant's guilt of the charge is not supported by substantial evidence, as will be discussed below.

The record shows that the Claimant and crew were shoving 74 empty coal hoppers from the main line track into Track C02. While performing that task, they were observed by two management officials who were conducting operational testing in the area. According to testimony, the officials were located in the front seat of a vehicle; the Claimant was located about 35 to 40 yards to their left.

Testimony by the Carrier's witnesses indicates that the officials did not observe the Claimant operate the switch prior commencing the shove movement. However, they both testified that after the cars were shoved into the track, the Claimant operated the switch leading to Track C02 without checking the switch points and failed to check the switch points afterward to ensure the points fit properly. The witnesses testified that after operating the switch the Claimant turned and walked away. The officials discussed their observations with the Claimant and told him they would be submitting a rules assessment documenting his operational test failure.

As the Claimant's representative established during the investigation, the switch in question was a main line switch equipped with a lock, and that according to the Carrier's operating rules, the switch must be secured and locked when not in use. The Claimant testified that the switch points were at his feet, that he checked them and ensured the switch was properly lined, and that he had no trouble with the switch. He also testified that the switch handle is a low handle, and that when it is laid down to be locked, the switch points are at one's feet. The Claimant essentially testified that he had ample time to check the switch points for debris and alignment while locking it. On page 23, during direct examination by the Conducting Officer, the Claimant testified:

Yes sir; as I stated earlier the gap was at...my feet, standing by the low switch and you can look straight down, there was nothing in the rail, so I went ahead to throw the switch and the switch points fit properly again' the rail, then I locked the switch back.

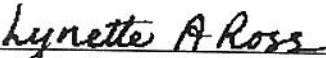
From our careful review of the testimony adduced on the record and after having duly considered the positions of the parties in light of the evidence, the Board finds that the Carrier's determination that the Claimant violated Operating Rule 104-C, and Safe Way Rules GS-18 and TS-7 was not established by the necessary proof. The Board understands that as an appellate body of review we must give deference to the findings of the Conducting Officer absent evidence in the record

which compels us to determine otherwise. In the instant case, we find that the Claimant's testimony was not accorded sufficient weight in light of the circumstances.

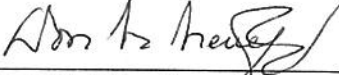
Therefore, in light of the above, the Board rules that the discipline shall be expunged from the Claimant's record. In accordance with the terms of the applicable Collective Bargaining Agreement, the Claimant shall be compensated for all lost time and fully made whole as a result of attending the investigation and serving the 20-day actual suspension. In addition, the Claimant's discipline record shall be modified accordingly.

AWARD:

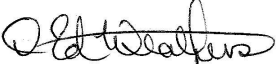
Claim sustained. The Board is ordered to comply with this Award within 30 days of its date.



Lynette A. Ross, Neutral Member



Don M. Menefee,
Carrier Member



O. Ed. Weathers,
Employee Member

Dated: 05/07/2014