

BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 65
AWARD NO. 65

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND)	
TRAINMEN)	PARTIES TO THE
vs.)	DISPUTE
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

"Claim on behalf of Conductor J.L. Adkins, ID # 210276, requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings since being removed from active service on April 5, 2011, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, and to have record expunged of all charges relating to the incident made the subject of the hearing on April 20, 2011 at Russell, Kentucky."

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 16, 2009, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on April 5, 2011, the Claimant was a Conductor for the Carrier, with approximately 5 ½ years of service. On that date, the Carrier says the Claimant was riding on a car to protect a shove movement. They say that he was riding the end platform of a car without a safety rail between him and the end of the equipment. He was removed from service later that day.

As a result, the Carrier placed the Claimant on administrative leave, with full pay, effective April 12, 2011 and held an investigation on April 20, 2011. Following the investigation, the Carrier dismissed the Claimant on May 19, 2011 for violating CSX Transportation Safe Way Rule GS-13. The Organization appealed this discipline through the proper process under the Collective Bargaining Agreement between the parties. The parties have been unable to resolve this issue and, after an on-property conference, they have placed the issue before this Board for adjudication.

Carrier Argument:

The Carrier says that the Claimant clearly violated CSXT Safe Way Rule GS-13, which states, in pertinent part:

"Riding on Equipment: When riding on Equipment: Do not ride the end of cars being shoved, nor on the end platform between coupled cars, unless the car is equipped with a riding platform that has a safety rail positioned between you and the end of the equipment."

The Carrier says that both the Claimant and the principal carrier witness in the investigation hearing agree on the essential facts of the case. When observed by the Carrier Officer the Claimant was riding on the end platform of the railcar. He was facing outward with his back to the safety rail on the car. His feet were on the appropriate platform and his handhold was on the bar behind him. No issue was taken with his stance *per se* – the issue was his chosen position relative to the safety bar itself.

The Carrier says that under its Individual Development and Personal Accountability Policy, this is a serious offense. They say that the Claimant had a previous major offense in June 2007 when he marked off under false pretenses. In that case, the Claimant was dismissed from service and returned by a separate Public Law Board. His discipline was reduced to a 30 day actual suspension by that Board. They list further offenses committed on July 13, 2009 and July 21, 2009 for which the Claimant signed waivers. They say that the instant case is therefore the Claimant's second third serious offense for which dismissal is required.

Organization Argument:

The Organization argues that they take issue with the Carrier's interpretation of the Rule itself. They say that, in fact, the Claimant fully complied with the Rule. They say it is clear from the testimony of all parties that the claimant placed the safety bar between himself and the equipment in question. While they agree that the bar was not between the Claimant and the ground, they say that that is not what is required by the Rule. They further say that this was the Claimant's understanding of the Rule, resulting from the training he had received. They say that this confusion is supported by the fact that the Carrier Officer initially told the Claimant that he would have to go and check to see if there had been a Rule violation. He only returned some 13 hours later to say that he had determined a rule violation had taken place. They say that, in testimony, the Carrier Officer stated that the rule says that "the safety rail has to be between the employee and the ground". They say that a clear reading of the Rule reveals otherwise.

Result:

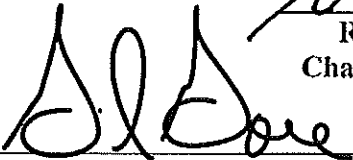
This Board finds that the Rule in question could be written more clearly. The question in dispute is what constitutes the "end of the car". This Board, however, accepts that the common definition and usage of this Rule is, in fact, that the safety rail should be between the employee and the ground.

However, this Board finds that the Organization has raised a colorable argument concerning this Claimant's understanding of what the rule might have been. As a result, this case is one for which this Board chooses to reduce the penalty for this proven Rule infraction.

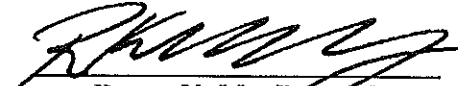
As a result, the Claimant is ordered back to work, without compensation, but with seniority unimpaired.

AWARD

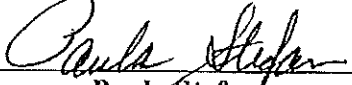
The claim is partially sustained.



Gil Gore
Vice-President
Organization Member



Roger K. MacDougall
Chair and Neutral Member



Paula Stefan
Director Labor Relations
Carrier Member

Dated: 12/21/2012

At: Chicago, IL