

**BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 68
AWARD NO. 68**

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

STATEMENT OF CLAIM:

"Claim on behalf of Conductor J.W. Smith, ID (209595), requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings since being removed from active service September 16, 2011, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, Stock and Bonus payments, and to have record expunged of all charges relating to the incident made the subject of the hearing held on August 17, 2011 at Nashville, Tennessee."

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 July 6, 2011, the Claimant was a Conductor for the Carrier, with approximately six years of service. On that date, the Carrier says they observed the Claimant protecting a shove movement in a yard. They say that he stopped the train to throw a switch at a point where the locomotives fouled the adjacent track.

As a result, the Carrier scheduled an investigation for July 20, 2011. At the request of the Organization this investigation was rescheduled until August 17, 2011 by agreement. Following the investigation, the Claimant received a Letter of Discipline dated September 16, 2011 dismissing him from service for violation of CSX Transportation Operating Rule 104 – B.

At the hearing in this matter, the parties agreed that as a result of the award in PLB 7362, Docket Number 100, which sustained the claim for a previous 30 day suspension for this Claimant, this case reverts to a Step 2 Charge, and therefore would not allow for dismissal in accordance with the Carriers IDPAP. Thus, with the agreement of the parties, this Board is dealing with a 30 day suspension in this matter.

Carrier's Position:

The Carrier says that the 2 Trainmasters who were doing an efficiency test noted that this Claimant fouled another track prior to getting down to line a switch for his movement.

CSX Transportation Operating Rule 104 – B states, in part, that:

"Rolling equipment must not foul a track until it can be visually determined the switches and derails connected with the movement are properly lined and the intended route is seen to be clear..."

The Carrier points out that during the investigation, the Carrier witness stated that he could touch the equipment on each track with his outstretched arms, thus proving that the Claimant had placed the train in a position where it was foul of the adjacent track.

Organization's Position:

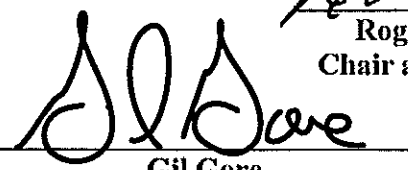
The Claimant denied placing the train in a fouled position. The Organization says further that the Claimant might be faulted for an error in judgment but that the discipline assessed was not commensurate with the offense given that the violation was neither intentional nor flagrant. They further point out that there were no injuries or damage sustained as a result of any violation.

Result:

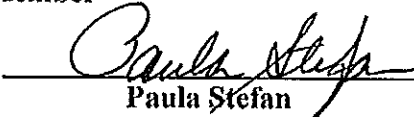
Even though the Claimant denied being foul of the track, the evidence presented to this Board is sufficient for the Carrier to be held to have proven its case. Given the circumstances, and the past discipline history of this Claimant presented in evidence to this Board, this Board sees no reason to disturb the 30 day suspension incorporated in this case.

AWARD

The claim is denied.


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