

BEFORE  
PUBLIC LAW BOARD NO. 7362  
CASE NO.63

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

**STATEMENT OF CLAIM:** "For all reasons listed above, I request your reconsideration in discipline assessed to Mr. McCree and request that he be paid for all time lost, and that this incident be removed from his personal history."

**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 November 19, 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. As specified in the PLB Agreement establishing this Board, this Award shall be limited to one page and shall not establish precedent nor be referred to by the Parties in the future.


After a thorough review of the record, the Board concludes that Mr. McCree, a Conductor with 10 years of service, was a Conductor on a job that shoved into an industry on March 13, 2010. It is not disputed that the shove movement in question went past a stop block, resulting in the derailment of an empty tank car and some damage to track and equipment. It is also common ground that Mr. McCree was in the proper position to observe the shove movement. Mr. McCree was charged with violating the Carrier's rule 103 and 103-A (Shoving or Pushing Equipment at any Location), and assessed 30 days actual suspension, which he served from July 14, 2010 through August 12, 2010. Mr. McCree chose to be represented by the Local Chairman for the Brotherhood of Locomotive Engineers and Trainmen (the "Union") at this hearing.

The Union contends that Mr. McCree was not given a fair and impartial hearing since notes of the preliminary investigation into the incident somehow went missing and were not available at the formal investigation (which was postponed 6 times at the request of the Union). The Carrier says that the investigation was fair, since all of the relevant witnesses were called and available to answer questions by all parties at the formal investigation hearing. I agree with the Carrier on this issue. There is no indication that the Employee was prejudiced in any way through the loss of the notes. The Union also contends that there was prejudice since the Engineer on the job was not investigated for a rule violation. I cannot agree. The Carrier charged the employee it had evidence against. There was no evidence that the Engineer had done anything wrong, given the engine download which was reviewed and put into evidence. The Union also contends that there must have been something wrong with the engine and/or air system which caused the cars to speed up at the last few seconds. There is no evidence from the Engineer or downloads that this was the case. In any event, it remains the responsibility of the Conductor to give instructions to the Engineer so as to prevent an incident such as this. There is no question that this was a tight "spot". However, this means that the Conductor had an even greater responsibility to ensure proper handling in the last few feet of the movement. The allegation of the Union that there should have been an additional stop block is irrelevant to the charge and the outcome – the Conductor had an obligation to give instructions so as to stop short of however many stop blocks existed. In this, the record shows that the Conductor, unfortunately, failed, and, as a result, made himself subject to discipline.

The record indicates that this is the Employee's second "Serious Occurrence" under the Carrier's IDPAP within a three year period. As such, the Policy calls for discipline of up to 30 days actual. In sitting as an appellate tribunal on this issue, I see no reason to disturb the Carrier's assessment of 30 days actual suspension.

**AWARD**

The Claim is denied.

  
\_\_\_\_\_  
**Roger K. MacDougall**  
**Chair and Neutral Member**

Dated: July 5, 2011

At: Chicago, IL