

**BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO.69**

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

STATEMENT OF CLAIM:

“That CSX Transportation, Inc. make Conductor Butts whole for all lost time as a result of the arbitrary dismissal, from the date of the improper dismissal until Conductor Butts seniority rights was reinstated.[...].” for his 5 day actual suspension.

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 Conductor Butts was charged with failing to leave cars clear of an insulated joint on a mainline and failing to report the lack of a lock on a portable derail at the same location, all on May 8, 2010.

The Union raises a preliminary issue that the charge letter was deficient in that it failed to mention a specific rule. The Board disagrees. The purpose of a charge letter is to provide sufficient details to allow the Union and the employee to mount a proper defense. The Carrier specified the date, the location and the allegations outlined above. Unless the CBA provides otherwise (which neither party has alleged), that is sufficient to prepare a defense.

The Union suggests, through it’s questioning, that the Carrier should have trained conductors on the location of all insulated joints. The Board cannot agree. There is no agreement provision referenced that so requires. It is sufficient that Rule 230(3) specifies to leave cars clear of insulated joints at the clearance point. A qualified conductor, with, as in this case, over 30 years of experience, can be expected to recognize an insulated joint versus a non-insulated one and knows to look for them.

The Union raises the issue that there was no training on the use of portable derails. There is no evidence to refute this allegation in the record. However, Conductor Butts was able to, according to his own testimony, remove and re-apply the portable derail. Further, at page 18, lines 4-28, Conductor Butts says that he had reported the lack of a lock on this particular derail in the past, and that he had intended to report it this time but did not. The Board finds this sufficient evidence to show that Rule 104G was violated when he did not report the lack of the lock.

Since the rule violation involved a derail, this is classified as a Serious Offense under the Carrier’s IDPAP, and calls for a 5-15 day suspension for the violation of Rule 104G alone. Although Conductor Butt’s long service is a mitigating factor, I see no reason to disturb the Carrier’s assessment of 5 days actual suspension for the combined infractions.

AWARD

The Claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated: July 5, 2011

At: Chicago, IL