

**BEFORE
PUBLIC LAW BOARD NO. 7526
CASE NO.2
AWARD NO. 2**

**Union File: 204799
Carrier File: 2011-092867
NMB Subject Code: 119**

UNITED TRANSPORTATION UNION (Yardmasters))	
vs.)	PARTIES TO THE
)	DISPUTE
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

"Please accept this claim for regular Yardmaster J. McDougall, ID 209766 at Louisville, KY for all time lost on account of the discipline assessed from the investigation held on March 8, 2011. Furthermore, I make claim for all days of lost earnings, all vacation entitlement and all railroad retirement credits restored. Also, an additional eight (8) hours pay for Yardmaster McDougall for March 8, 2011, the day of the investigation....this Committee request that Yardmaster McDougall personal record be cleared of this entire incident.."

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Organization involved in this dispute are respectively Carrier and Organization within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Public Law Board Agreement dated January 25, 2012, 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 and the eloquent and well-presented arguments by both parties at a hearing in Jacksonville, FL on April 4, 2012, the Board concludes that Yardmaster McDougall was hired on August 21, 2005 and attained yardmaster seniority on June 6, 2007. He was charged with failing to block a requested track and failing to provide proper protection to Mechanical employees on February 5, 2011 while working as a yardmaster in the hump tower in Louisville, KY.

An investigation was held, after agreed-upon postponements, on March 8, 2011. As a result of that investigation, the Carrier determined that the Claimant was guilty of violating Louisville Division Timetable No. 7 and Louisville Terminal Special Instructions GR-102. As a result, the Claimant was dismissed from service on March 22, 2011. The Organization appealed the dismissal and the Carrier denied the appeal. The case was conferenced on the property and is now properly before this tribunal.

Carrier's Position:

1. Procedural Issues

The Carrier says that the investigation was conducted in a fair and impartial manner, as evidenced in the transcript of the proceedings.

With respect to the Local Chairman not receiving copies of the Charge Letter nor the Postponement Letters, the Carrier points to Article 21(a) of the Collective Bargaining Agreement, which provides in pertinent part: "Such Yardmaster shall be apprised in writing of the precise charge against him, with copy to the General Chairman, ..." Accordingly, notice was mailed to the Claimant and General Chairman Turner on February 9, 2011. There is no dispute between the parties that the Claimant and the General Chairman were appropriately notified.

Although not required by the Agreement, the Carrier provides evidence that they did send notice to Local Chairman Griffin as a courtesy. The track and confirmation receipt shows that attempts were made to deliver the notice to Mr. Griffin on February 10, 2011 but the item remained at the local postal office unclaimed until March 1, 2011. The Postponement Letters were mailed, priority, on February 15, 2011 to the Claimant, Mr. Turner and Mr. Griffin. At the investigation, Mr. Griffin testified that the address that the notice was mailed to was correct (Tr. p. 5).

Additionally, the Carrier says that the Claimant and Mr. Griffin were present at the hearing and both testified that they were prepared to proceed (Tr. pp. 4-5). There was no indication in the record that the Claimant and/or Organization had endured any hardship whatsoever as a result of Mr. Griffin not receiving notice.

With respect to pre-hearing discovery, the Carrier points out that there is no provision in the Agreement which affords the Organization the right to discovery. Accordingly, they say, the Carrier is not obligated to provide any evidence to the Organization prior to the investigation.

With respect to the tag vs. peg controversy and the issue of admission of the telephone transcript, the Carrier says the purpose of that transcript was to determine who had instructed the Claimant to block Bowl 14 (Tr. p. 9). They say that a review of the conversation between the Claimant and Car Inspector shows that the Car Inspector instructed the Claimant to "tag out A14" (Tr. p. 9). Whether the word "tag" or "peg" was used is entirely irrelevant because it is clear from the transcript that A14 rather than B14 was the track that the Claimant was instructed to block. Moreover, they say, the Organization failed to provide any evidence indicating that the portions of the transcript that it alleged was inaccurate prejudiced the Claimant in such a manner as to prevent him from defending against the charge.

2. Burden of Proof

The Carrier says that the evidence shows that the Claimant was called by the Car Inspector at 0202 hours. During that conversation, the Car Inspector instructed the Claimant to block out Track A14 (Tr. p. 8). Operating Rule GR-102, Part 4 specifies what the Hump Yardmaster, as operator of the switches, must do to block or protect the track and denotes the information that should be recorded in the log after providing protection. Rule GR-102, Part 4 is as follows:

"After the operator of the remotely controlled switches has received the notification required by paragraph 2 c, the operator must line each remotely controlled switch against movement to that track and apply an effective locking device to the lever, button, or other device controlling the switch before he may inform the employee in charge of the workmen that protection has been provided.

The operator may not remove the locking device unless he has been informed by the person in charge of the workmen that it is safe to do so.

The operator must maintain for 15 days a written record of each notification which contains the following information:

- 1. The name and craft of the employee in charge who provided the notification;*
- 2. The number or other designation of the track involved;*
- 3. The date and time the operator notified the employee in charge that protection had been provided by the first paragraph of D; and*
- 4. The date and time the operator was informed that the work had been completed, and the name and craft of the employee in charge who provided this information."*

In short, the Carrier says, Rule GR-102 Part 4 requires that the employee operating the remotely controlled switch, line the switch against the movement and secure the locking device of the switch to ensure that protection is provided before the employee informs any workmen that protection is secured. The Claimant confirmed that Track A14 was blocked (Tr. p. 8). However, the Claimant had blocked Track B14 rather than Track A14. B14 is a Bowl Track and A14 is a Receiving Track; the two tracks are located at two different ends of the yard but are under the Claimant's area of responsibility and control (Tr. p. 9). At the investigation, the Claimant argued that GR-102 Part 4 had never been complied with since he has been a Yardmaster (Tr. pp. 40-42). The Carrier says that this argument fails on at least two levels. First, there was no evidence entered to support the Claimant's argument of past practice. Second, it is irrelevant to the question at issue. The Claimant was charged and found guilty of violating Louisville Division Time Table No. 7 Louisville Terminal Subdivision Special Instructions General Regulation (GR) 102 (Instructions). Therefore, the issue is whether the record supports the Carrier's determination that the Claimant violated said Instructions.

The Instructions are as follows:

The Louisville Division Time Table No. 7 provides Instructions for Protecting Workers in the Bowl Tracks. Part B of those instructions states:

The Hump Yardmaster must manually block out the north end of the bowl track requested before allowing crews to enter tracks from the south end.

It is also clear that the protection requested was not for a bowl track, and therefore the provisions in Louisville Division Timetable No. 7 with respect to bowl tracks do not apply to the mistake. It is common ground that track A-14 is "other than main track". Hence, Operating Rule GR-102 (2)(c) and Part 4 applies. Therefore, as argued by the Carrier, the Claimant was to have lined the remote control switch leading to track A-14, so as to protect the workers, even if A-14 itself had manually operated switches. That is undoubtedly why the Carman in question asked the Claimant for protection. Part of that Rule provides that certain documentation be filled out to evidence the protection. The Claimant admittedly failed to do so. This Board finds that the Claimant, therefore, violated Operating Rule GR-102. The fact that there was no evidence of actual danger to others is immaterial. Operating Rules in this industry are in place to ensure safe practices are adhered to at all times, so that safety issues do not arise. Fortunately, in this case, no one was endangered by the Rule breach. However, railroads do not have to wait for an actual injury to act on a Rule breach. In fact to do so would be wrong.

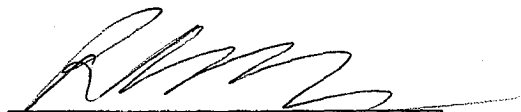
In this case, the Carrier has met its burden of proof.

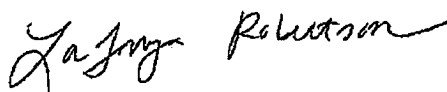
3. Discipline

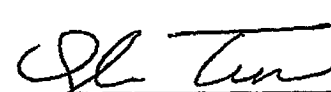

This Claimant has less than 6 years of service and less than 4 years as a Yardmaster. In that time he has been progressively disciplined up to the most recent 135 day suspension. While this Board has much sympathy with the Organization's argument that the role of Yardmaster in a busy yard can be stressful and exhausting (as eloquently pointed out in the study attached to their submission), in all of the circumstances in this case, and given the Claimant's checkered discipline history, this Board cannot see fit to alter the discipline assessed.

AWARD

The claim is denied.


Roger K. MacDougall
Chair and Neutral Member


LaTonya Robertson
Manager Labor Relations
Carrier Member

 
Doyle Turner
General Chairman, UTU L&N & C&O
Yardmasters
Organization Member

Dated: 6/5/2012 At: Chicago, IL