

PUBLIC LAW BOARD NO. 6823

UNITED TRANSPORTATION UNION)	
)	CASE NO. 48
v.)	AWARD NO. 48
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

“Claim of J. E. Snowden #573498 for all time lost for attending investigation and 5 day suspension, 6 days total. Claim is for any subsequent lost wages and benefits. Claim is also made for removal of any and all notations from his personal record concerning this incident.”

FINDINGS AND OPINION:

Public Law Board No. 6823, upon the whole record and all the evidence, finds that the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. Parties to said dispute were given due notice of hearing thereon.

On November 10, 2005, the Claimant attended a formal investigation regarding a charge that, on November 2, 2005, at approximately 4:35 a.m., while working job Y331-01 in the vicinity of mile post YYG 171, Hulsey Yard, he allegedly failed to use positive identification while giving instructions to the engineer. On November 18, 2005, the Claimant was assessed discipline of a five-day actual suspension for his violation of CSX-T Operating Rule 411, Positive Identification.

The Organization promptly appealed the Carrier’s disciplinary action and the parties discussed the appeal in conference, the record shows. This matter is now properly before the Board for final and binding adjudication.

The Board has carefully reviewed the entire record. The Claimant was charged with allegedly having violated Operating Rule 411, identified above, after Trainmaster S. T. O’Neal overheard a radio transmission from the Claimant to his engineer, C. J. Johnson. O’Neal testified that he had overheard the Claimant say, “CJ, let me know when you’re ready to come off the Pit.” It was O’Neal’s testimony that the communication was improper because the Claimant did not make positive identification by first using engine numbers, titles, and last names, before initiating the radio transmission with Engineer Johnson. See transcript pages 4 through 7.

On the merits, we find that the Carrier failed to sustain its evidentiary

burden of proof. During cross-examination, Trainmaster O'Neal testified that it is necessary for crews to make positive identification before executing a move, giving instructions, or transmitting an initial radio communication, which the Board does not dispute. However, the Claimant essentially testified that the statement overheard by O'Neal occurred six hours into his and Engineer Johnson's tour of duty and immediately after he and Johnson had completed a job briefing. Although the Claimant testified that he did not use positive identification, it was also his testimony that, in his view, he did not violate the rule because, again, they had just finished the briefing and he and Johnson were neither making nor ending any moves at the time of the conversation.

The Organization's objection regarding Engineer Johnson's absence from the investigation must be sustained. Because Johnson was not present, the Claimant's testimony as to his conversation with Johnson and the underlying circumstances could not be refuted. The Carrier was responsible for arranging Johnson's attendance at the investigation given his standing as a material witness, the Board emphasizes. We also concur with the Organization's position that Foreman Hodges' testimony carried little weight. Despite Hodges' testimony that he had not been using positive identification on the date in question, unlike the Claimant, Hodges was not charged with any Operating Rule violation. For reasons unclear in the record, Hodges received more lenient treatment, and the Organization was thus correct to question his ability to render impartial testimony.


In light of the inherent evidentiary and procedural problems in this matter, Board rules that the instant claim must be sustained in its entirety. Accordingly, the discipline will be expunged from the Claimant's record and he shall be paid full wages for any time lost as a result of the investigation. The Claimant is also entitled to be paid full wages for any time lost as a result of the five-day suspension served.

AWARD:


Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.

Lynette A. Ross

Lynette A. Ross, Neutral Member



H. Joseph Garcia,
Carrier Member



Roy G. Boling,
Employee Member

Dated: 02/12/07