

**PUBLIC LAW BOARD NO. 6902**

**Case No. 39**

**Award No. 39**

**PARTIES**

**to**

**DISPUTE:**

United Transportation Union

-and-

CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

“Claim of H. A. Thomason (623452) for clear record, pay for all lost time and reinstatement of benefits pursuant to the Schedule Agreement in connection with investigation held July 17, 2006” 30 days actual suspension.

**FINDINGS:** This dispute arose as a result of the Carrier Charging the claimant with the following offense:

“your responsibility, if any, in connection with a report received that on June 15, 2006, at approximately 0145 hours, while working A74314, in the vicinity of milepost AK 460.4, you dismounted moving equipment before movement came to a complete stop, and all circumstances relating thereto.”

The Carrier based its conclusions in this case on the testimony given by Trainmasters' Reyes and Guenther. The Trainmasters' testified that while they were doing an operational test, they witnessed the claimant dismount from a moving train, in violation of Safety Rule GS-11.

The following are pertinent excerpts from Messrs. Reyes and Guenther's testimony:

**Mr. Reyes:**

Pg. 5 – “Q. Mr. Reyes can you tell me where you were located at during the time of the Operational Test?

A. Yes sir I can and I actually a diagram of the location that I would like to hand out and the diagram points out the southbound direction that the train was traveling crossing over 9<sup>th</sup> Street, James Brown Boulevard. Trainmaster Guenther and myself were parked on the opposite side of the street according to the diagram of James Brown Boulevard where I could see the train at a 45 degree angle. So we were approximately 2 car lengths or 100 feet.

Q. When you were located in the vehicle what positions were you in the Driver's seat or passenger?

A. I was in the driver's seat facing. The train was traveling in the southbound Direction, I would be, the vehicle was facing west. Facing the rail and I was I the driver's seat.

Page 6 Q. And when Mr. Thompson came out the front of the locomotive did he dismount. Can you tell me which side of the locomotive that he dismounted?

A. He dismounted on the Engineers side so it would have been the west side of the rail.

Q. And is that the side that you were on?

A. **No sir, I was parked on the east side of the rail. I was parked on the opposite side of the tracks from where Mr. Thomason dismounted.**

Q. And from that point can you describe to me what you saw from that point after he was down on the ladder of the locomotive?

A. Yes sir, he did stop. He did come out of the front door of the locomotive and got to the bottom step with all his proper flagging equipment and proper personal protective equipment and from where we were parked we could observe Mr. Thomason dismount and walk towards the head of the engine. **We could not see Mr. Thomason's feet touch the ground but we did see him walking towards the head of the engine before the movement came to a stop.** At no point when Mr. Thomason was walking towards the crossing after giving five to seven steps at no point prior did the engine come to a complete stop.

Mr. Guenther:

Page 14 - Q. Where you were sitting at in the vehicle you were on the passenger side is that correct?

A. Yes sir, on the passenger side.

Q. And was your view obstructed by any item so you could see what took place?

A. **I could not see Mr. Thomason actually standing on the ladder of the Engine. What I could see was his feet step down.** We had been testing at that crossing and looking for that specifically and I cannot this person get down but

I seen his feet as they stepped to the ground and then observed him walk ahead of the movement.

Page 15 - Q. Mr. Guenther you have also, let me ask this question. Just to make it establish that you were on the east side of the railroad is that correct?

A. Yes sir on the east side.

Q. And the Conductor got off on the West side of the Railroad is that correct?

A. Yes sir, he dismounted on the west side.

**(Emphasis added)**

The Carrier asserts the testimony presented at the hearing conclusively proved the claimant violated the above cited safety rule, and that their assessment of discipline in this case was warranted.

The Organization challenges the Trainmasters perception as to what actually transpired. They point to the following eyewitness testimony of Engineer Long, who in their view had the best unobstructed view of what took place, and proves the claimant did not dismount from moving equipment:

Mr. Long:

Page 11 - Q. Mr. Long can you tell me while you were operating the train did you see Mr. Thomason dismount the locomotive.?

A. Yes, I did.

Q. And can you tell me was the movement stopped when he dismounted?

A. Yes, it was.

Q. And you watched him and had a discussion before he left the locomotive?

A. Yes.

Q. That he was being tested?

A. I told him. I think you are being watched, be careful.

Page 12 – Q. And where was that conversation held at?

A. He was on the bottom step of the engine and my head was out of the window.

Q. Okay. Was your head out the window when you observed him dismount?

A. Right after I said that the engine stopped and he got down.

Q. **Okay. And it had come to a complete stop?**

A. **It had come to a complete stop.**

Q. In previous testimony there was a conversation between Mr. Reyes and Mr. Thomason and they discussed slack. Did you feel and slack when you came to a stop?

A. No, the slack was already in.

Q. **So there was no slack?**

A. No.

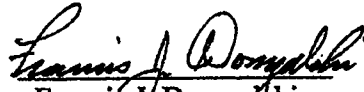
**(Emphasis Added)**


After a thorough review of the record, the Board finds, that aside from the fact that the claimant steadfastly denies that he dismounted from moving equipment, the eyewitnesses (Trainmasters' and Engineer) gave conflicting versions of what allegedly transpired, and the Board found no evidence in the record to resolve the question of their veracity.

Therefore, based on the record presented, the Board finds the Carrier failed to meet its burden of proof in this case. Thus, the discipline shall be removed from the claimant's record and he is to be paid for all time lost.

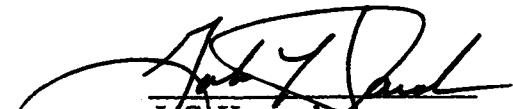
The Carrier is directed to implement the Award within 30 days of receipt.

AWARD: As specified in the Findings.

  
Francis J. Domzalski  
Neutral Member

  
F. J. Doyle  
Carrier Member

Dated FEB. 21, 2007

  
J. C. Hancock  
Organization Member