

NEWS ALERT**LABOR & EMPLOYMENT**

Running a 21st Century Railroad with 20th Century Job Skills: How to Accommodate Disabilities?

By Barry J. Waters | June 19, 2017

On March 7, 2011, Peter Joyce, Jr. (“Joyce”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”), claiming that Respondent CSX Transportation (“CSX”): (1) denied him a reasonable accommodation in the use of a computer device that he had difficulty mastering because he suffers from Attention Deficit Disorder and other cognitive limitations; and (2) he was disciplined and removed from service for an infraction which he claims was related to his disability. Joyce asserted that the unwarranted discipline caused him great anxiety and distress resulting in his being placed on an occupational disability retirement. More than five years later, the MCAD held hearings on the claim in September 2016. Eight months later, Hearing Officer Eugenia Guastaferrri issued her decision in which she awarded Joyce \$224,070.39 in lost pay and \$100,000 in emotional distress damages, both accruing twelve (12%) percent interest from May 7, 2011 until payment.

This case illustrates the difficulties inherent in evaluating the performance of long-term employees with respect to rapidly-changing job requirements due to technological advances – particularly when evaluating reasonable accommodations for claimed disabilities.

TRADITIONAL RAILROAD WORK: NO REQUEST FOR ACCOMMODATION

Joyce had a career in the railroad industry spanning some thirty-two years from 1978 until 2010. He started as a union employee of Conrail and thereafter worked for various railroad operators in a variety of positions, including brakeman, trackman, flagman, switch tender, utility man and conductor. Joyce began working for CSX in 2001. The terms and conditions of his employment at CSX were governed by a collective bargaining agreement, pursuant to which he was afforded “bumping rights.” Between 2001 and 2004, he was employed primarily as a brakeman or in a utility position. Joyce testified that during this time, his cognitive limitations did not interfere with his job duties as a brakeman and he did not need an accommodation. Therefore, he felt there was no need to inform anyone at CSX about his diagnosis and he did not seek any accommodation for his disabilities.

If an employee has a disability, engage in the interactive process to determine whether the employee can perform the new essential functions, with or without reasonable accommodation.

CHANGING JOB REQUIREMENTS DUE TO THE INTRODUCTION OF NEW TECHNOLOGIES

In 2004, the brakeman position that Joyce had held since 2001 was abolished. As a result, in October of 2004, Joyce exercised his bumping rights to opt for a Conductor position. His duties as a Conductor included: recording work time and overtime of train crews on a CSX computer system and using a portable computer console (referred to as an Onboard Work Order Device or OBWOD) to track train car movements and deliveries of freight to customers. The OBWOD is a hand-held computer that allows a conductor to record the delivery of freight for business reporting purposes. As the Conductor, Joyce had to retrieve the Onboard device from its docking station to enter data about train car movements and deliveries as the train moved from station to station and to finalize data at the end of the work shift.

When Joyce opted into the Conductor position, he did not tell anyone at CSX that he had a disability, nor did he request any accommodation for his disability with respect to using the Onboard device. He stated that his symptoms first began to affect his work when he took the Conductor position because of all the additional administrative responsibilities. Joyce had a great deal of difficulty learning and mastering the computer system, he testified, because of his cognitive impairments. He testified that he advised the Trainmaster that he had never used the Onboard device before and did not know how to use it, but was told to "just do the best you can." Joyce testified that he was not provided with any training or classes on how to use the device. Given his difficulties using the Onboard device, Joyce testified that he was permitted to record the necessary data manually on a paper back-up system.

2004 DISCIPLINE FOR TIMECARD VIOLATIONS

In November 2004, Joyce was suspended for timecard violations. CSX terminated his employment. Joyce first disclosed to CSX the diagnosis of his cognitive disabilities and the impact on his ability to do his work, including using the Onboard device, at a disciplinary hearing. He provided CSX with copies of his neuropsychological report and two doctor's letters. In June 2005, as a result of negotiations with the union, Joyce was rehired without back pay.

RETURN TO TRADITIONAL WORK

Joyce was hired back into the position of "switchman," in which he was not required to use the Onboard device. In July 2009, CSX abolished the switchman position, and in 2010 it eliminated his next position, as a flagman. The only remaining non-Conductor job was a utility position at a distance of some 63 miles from Joyce's home. Instead of commuting this distance, Joyce bid on an open Conductor position knowing that he would need to use the Onboard device. He testified that he believed he could do the Conductor position with accommodations for his disabilities. Joyce advised his supervisor on the first day that he had no training and limited experience using the Onboard device and needed more training. He stumbled with its use and was allowed to make his entries on paper and to fax his paperwork to the Customer Service Center. His supervisor was aware that Joyce was entering information by hand on paper notes; he tried to wean Joyce off the notes. Joyce testified that within the next week, when his supervisor questioned his failure to use the device, he informed his supervisor that he suffered from ADD/ADHD and needed additional time to perform administrative duties, and that his supervisor promised him more training on the device or send him to a class, but that he never received the training.

MORE OVERTIME VIOLATIONS

On June 14, 2010, CSX cited Joyce for a violation of CSX overtime policy and was taken out of service. Joyce believed that he was being punished by CSX for taking too much time to complete administrative tasks, but that this was a result of CSX's failure to provide him with the necessary training he had repeatedly requested as an accommodation to his cognitive limitations. He notified CSX that he was medically unable to participate in the ensuing disciplinary hearing and unable to perform the job functions of a CSX conductor. Due to Joyce's inability to attend the hearing, it was adjourned indefinitely and has never been held.

TECHNOLOGICAL ADVANCES

Not included in the Hearing Officer's decision but in a widely published development, in or about 2004 CSX launched a mobile intellectual property platform. By 2005, CSX had launched the Onboard Work Order Reporting System which keeps several hundred rail conductors in constant contact with workflow progress reports and freight scheduling updates, eliminating the reworking and handling of manual data and increasing workforce productivity, uniform job reporting and data accuracy. Technological advances continued with dozens of sensors and electronics on freight locomotives that monitor a host of things, such as the throttle position, track speed and fuel levels. Exponentially, more electronic devices will be installed on locomotives, as well as along wayside, on back office computers and in communications systems, in connection with the implementation of positive train control by 2020.

TAKE AWAYS

1. As the 2016 Presidential election highlighted, technological advances are driving fundamental changes in a wide variety of traditional jobs. Computer skills are now essential to many of the 21st century job functions that were once accomplished manually. Be sure to review and update your job descriptions to reflect the new, technical requirements.
2. Determine which of the technological components are essential job functions.
3. Provide training opportunities to current employees who are expected to master the new essential functions. In this case, the Hearing Officer focused her decision on the Company's failure to provide training. Even with appropriate training, Joyce may not have been able to master the Onboard device efficiently but we don't know that because, according to the Hearing Officer, the training was not provided.
4. Carefully consider what accommodations can be made so that long-term employees can adjust to these changes in essential functions.
5. If an employee has a disability, engage in the interactive process to determine whether the employee can perform the new essential functions, with or without reasonable accommodation. It may be that the employee cannot be reasonably accommodated to meet the 21st Century essential job functions. It is possible, perhaps likely, that Joyce would not have been able to do the essential job functions of a 21st Century Conductor, even with appropriate training.
6. Document, document, document.

If you have any questions regarding the information included in this bulletin, please contact:

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