

PUBLIC LAW BOARD NO. 7120

(BROTHERHOOD OF MAINTENANCE OF WAY
PARTIES TO DISPUTE: (EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated August 26, 2011, Roadmaster B. D. Bland notified J. E. Arrington (“the Claimant”) to attend a formal Investigation to be held on September 6, 2011, at an address in Florence, South Carolina, “to determine the facts and place your responsibility, if any, in connection with information that I received on August 8, 2011 in connection with a report that you made regarding an incident that occurred on August 3, 2011 at approximately 0830 hours at Ivey’s Towing and Garage parking lot in Garner, NC.” The letter continued that the Claimant was “charged with failure to properly perform the responsibilities of your position, failure to timely notify supervision of seeking medical attention for an on-duty injury, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A, General Regulation GR-2 and CSX Safe Way General Safety Rule GS-5.” The Investigation was subsequently rescheduled to September 8, 2011.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, J. E. Arrington, was hired by the Carrier on June 21, 2004. At the time of the incident here involved he held the position of Machine Operator on Force 6F04, a team of seven persons plus a backhoe operator that performed various track jobs such as building road crossings, putting in switch ties and cross ties, and cutting in turnouts.

On August 3, 2011, Force 6F04 was installing switch ties on the Norlina Subdivision near Raleigh, North Carolina. At the beginning of the day Claimant Arrington went with the backhoe operator and the vehicle operator to get a dump truck and its trailer out of the repair shop in Garner, North Carolina. Mr. Arrington was directing the backhoe operator, Mr. Banks, with hand signals while Mr. Banks was backing up the dump truck to couple with the trailer. There was a difference of about three inches between the trailer hitch and the ring on the dump track, and Mr. Arrington saw that they were not going to match up. He then went to the trailer and started turning the handle on the trailer jack with his left hand to adjust for the couple. While turning the handle he felt a sharp pain and pop in his left shoulder.

Mr. Arrington rode back to the job site with the vehicle operator. Four witnesses gave testimony as to what happened then. Ralph Allison, Jr., foreman of Force 6F04 since September, 2009, testified that when the employees came back to the site Mr. Arrington said, "I need to talk to you about something." The two men walked to the side, and Mr. Arrington told Mr. Allison that he felt a pain or a twitch in his left shoulder. Mr. Allison described the ensuing conversation between them as follows:

I asked him did he want to go to the doctor; and wanted me to call the roadmaster

to take him to the doctor and have it checked out. He told me no, he didn't want to get the roadmaster involved and he didn't want to go to the doctor at that time. He'd work and see how would it, I guess pan out the rest of the day[.] I told him, I said, well I have to do something. So, that's when I wrote a statement and me and him, he read it and then it [sic he?] signed it. (Tr. 26).

He asked him several times throughout that day did he want to go to the doctor, Mr.

Allison testified. Mr. Arrington did not request medical attention any time that day or the next day, Thursday, which was the last workday of his Monday - Thursday workweek.

On Sunday afternoon, August 7, 2011, Mr. Allison testified, Mr. Arrington sent him a text message that he had a doctor's appointment the next day, Monday, August 8 to have his shoulder checked out. He also stated that he couldn't get to see the doctor on Friday, and they gave him an appointment for Monday. Mr. Allison did not notify the Roadmaster or any manager that day of the message received from Mr. Arrington on Sunday. About 11:30 Monday morning Mr. Arrington called Mr. Allison and said that the doctor had taken him out of service and thought that he had torn his rotator cuff. Mr. Allison called Roadmaster Bland and notified him about the Claimant's on-duty injury and medical treatment.

On cross-examination Mr. Allison testified that since he has been foreman, Mr. Arrington was the first employee under him to have been hurt on the job. When Mr. Arrington told him of the injury, Mr. Allison stated, he was going to call Roadmaster Bland, "but . . . Mr. Arrington told me he didn't want to get the roadmaster involved, because he would be to the doctor and out of service and he couldn't afford to miss no time out of work." Mr. Allison was asked whether Mr. Arrington's statement to him relieved him as foreman of the gang of the responsibility to refer the injury to Roadmaster Bland. He answered, "Well, when, by him stating to me that he didn't want no medical attention and didn't want the roadmaster involved; at that particular time I felt that it

relieved me.” (Tr. 28).

The Organization representative followed up with the question, “Looking back now if the same incident occurred on August 3rd, would you handle it the same way?” He stated, “I would handle it different because we wouldn’t be sitting in here now.”

Mr. Allison expressed the opinion that it was proper for Mr. Arrington to report his injury to him rather than Roadmaster Bland. “. . . [H]e (Arrington) didn’t know who Roadmaster Bland was,” Mr. Allison stated. “I hardly really knew [who] he was myself at that time.” (Tr. 29). He had Roadmaster Bland’s and Assistant Roadmaster Small’s cell phone numbers, Mr. Allison testified.

The second witness to testify about what happened when Claimant Arrington returned to the job site from retrieving the dump truck and trailer was Assistant Foreman Chris Gable. He stated that Mr. Arrington “got out the vehicle . . . and walked up to us where we were working on the switch and that’s when he asked Foreman R. J. Allison to come to the side of the truck or the front, I’m not exactly sure where they stopped at to talk, but he needed to talk with him.” He did not hear the conversation, Mr. Gable testified.

About 15 or 20 minutes later, Mr. Gable stated, they came back from the truck and Mr. Arrington said that he needed to talk to Mr. Gable. He told Mr. Gable that he hurt his shoulder when they were at the shop. According to Mr. Gable, he asked Mr. Arrington if he was all right, and Mr. Arrington said that he and Mr. Allison had talked, and he (Arrington) had filled out a statement; that he wanted the statement to be filled out to have everything in place because he had been hurt before, and if anything came out of it, he wanted to have the things in place to be able to call the doctor. Mr. Arrington told Mr. Gable that he said on the statement that he refused medical attention, he didn’t want the

Roadmaster to take him to the emergency room; that he wanted to see how it was going to be. Mr. Arrington, Mr. Gable testified, did not say that he did not want the Roadmaster or supervisor to know about the incident.

Mr. Gable testified that he thinks that once Mr. Arrington notified Foreman Allison of the injury or incident that occurred, Mr. Allison was responsible to notify supervision. Prior to the incident, Mr. Gable stated, they were not in contact with Roadmaster Bland. The Monday after the incident Roadmaster Bland and his boss came to the team's work site. Mr. Gable expressed the opinion that Mr. Arrington complied with the rules by reporting the injury to Foreman Allison. In reply to questions by the conducting officer, Mr. Gable testified the when there is an on-duty injury an incident form has to be filled out the same day and that a written statement is not the same as an incident report.

The third witness to testify about Mr. Arrington's report of the injury to Foreman Allison was Assistant Foreman on Force 6F04 Travis Hackler. "I was standing at the back of the truck," Mr. Hackler stated, "when he (Arrington) called Mr. Allison over there to talk to him about it." Mr. Hackler described the conversation as follows:

He told him that he was helping Mr. Banks load his trailer, he's on, when he was moving the trailer jack up or down that he had popped and it was a little sore and he was wanting to report it to him in case it got worst [sic] and Mr. Allison asked him if want to call the roadmaster and take him to the hospital and he told him he didn't need any medical attention, he just wanted to report it to him to, in case something did happen, that he went through the right steps to report it. (Tr. 54).

Asked by the Organization representative if it would be reasonable for Mr. Arrington to report the injury to Track Foreman Allison and he, in turn, be required to contact supervision, Mr. Hackler stated, "Yes, that's the way I've understood for us to do it."

The first time he met Roadmaster Bland, Mr. Hackler testified, was the Tuesday after the

incident when Mr. Bland came out and talked to them about taking pictures and reenactment.

The fourth witness to testify about report of the injury to Foreman Allison was Claimant Arrington. He stated that he told Mr. Allison that he wanted “the necessary steps to be taken, so if I had to seek medical attention in the future that they will be no questions and there would be no confusion.” To a question from the conducting officer, Mr. Arrington acknowledged that he did not fill out a PI-1A Employee’s Injury And/Or Illness Report or tell Foreman Allison that he needed to fill out the report.

The statement which Mr. Arrington signed for Foreman Allison was introduced into evidence as Carrier Exhibit 16. It stated as follows:

8-3-11 9:50 AM J. E. Arrington felt pain in his left shoulder. He said he didn’t want to go to the doctor he was helping the backhoe operator load his machine when he felt it the pain.
/s/ J. E. Arrington

Mr. Arrington testified as follows regarding his signing of the statement:

Mr. Allison went into the truck and wrote this statement which is Exhibit 16 and called me to sign it and I read over it and I asked – he asked me before I signed it if I wanted a roadmaster to come and pick me up and take me to the emergency room and I told him no sir, I don’t want to seek emergency attention, I don’t want to seek medical attention at the time and he said okay, well sign this statement, so I signed it because it was a brief statement of what had happened and after signing the statement I said, is that it, do I go back to work and Mr. Allison, yes sir you can go on back to work, so I went back to work. (Tr. 59).

Mr. Arrington testified that he worked his full shift on August 4, 2011. He worked the jack rail to remove tie plates, he stated, and strung out the spikes for the team, laid them on the ground, got them ready. Other than that he did not do much, he stated, “because I was favoring my arm pretty heavy.”

The conducting officer asked Claimant Arrington, “Did you operate the spike driver as Mr. Allison had stated earlier?” Mr. Arrington answered, “No sir.” (Tr. 59).

In reply to a question by the conducting officer, Foreman Allison had testified earlier that on August 4, 2011, “He (Mr. Arrington) ran the jackhammer basically most of that day.” (Tr. 26). Mr. Allison explained that the jackhammer is the “Matweld hammer” that drives spikes. Foreman Allison was later recalled to testify by the conducting officer who asked, “What activity did he (Arrington) perform on August 4, 2011?” He testified, “On August 4, 2011 he strung out some spikes and he ran the jack hammer a little bit.” The conducting officer asked, “Anything else he worked on that day?” Foreman Allison stated, “I don’t recall him pulling those spikes with no pull bar, nothing like that.” (Tr. 66).

Mr. Arrington testified that Thursday night he drove approximately 300 miles to his home in Georgia. Asked by the conducting officer, “You didn’t have any difficulty driving with your shoulder condition?”, he answered, “Yes sir, I did.” The conducting officer asked the Claimant if he at any time reported to Roadmaster Bland or Assistant Roadmaster Small that he was seeking medical attention for an incident that occurred on August 3, 2011. He stated, “No sir, I had no idea who either of these people were at this time.” He had never seen either of them, he stated, and had no contact information for either of them. In reply to the conducting officer’s query, he testified that he assumes that he could have gotten the contact information from Foreman Allison.

Earlier in the hearing a Carrier witness had identified a Form P I-1A that Mr. Arrington had filled out for an injury received on July 5, 2008, when he was stung in the right arm by an insect while setting plates on track. The form gave the name M. H. Burton as the “name of supervisor notified.” Referring to the 2008 incident, the conducting officer asked Mr. Arrington if he reported it to his supervisor. He answered, “No sir.” The conducting officer followed up, “Was M. H. Burton your supervisor?” Mr.

Arrington replied that “he was the supervisor, yes sir but that’s not who I reported my injury to.” Questioned by the conducting officer, “Who did you report the injury to?”, Mr. Arrington testified, “I reported the injury directly to my foreman.” He (Arrington) filled out the Form PI-1A the day of the occurrence, Mr. Arrington stated.

In responding to questions from his Organization representative, Mr. Arrington testified that if Mr. Allison had provided him a P I-1A form, he would have filled it out. Similarly, he stated, he would have had “no problem” if Mr. Allison had told him that it was necessary for him to contact Roadmaster Bland. When he signed the statement, Mr. Arrington testified, he thought that Mr. Arrington had contacted Mr. Bland. It is “not correct” that he did not want the Roadmaster to know about his injury, Mr. Arrington stated. What is correct, Mr. Arrington testified, is that he did not want medical attention. When he had his injury in 2008, Mr. Arrington testified, he notified his foreman of the injury, and it was the foreman who notified Mr. Burton.

General Safety Rule GS-5. Reporting Injuries or Incidents provides as follows:

A. On Duty Injuries

Any employee experiencing an on-duty injury must report the injury to a supervisor at the time of the occurrence prior to leaving the property on the day of the occurrence so that prompt medical treatment may be provided. A form PI-P1A must be completed by the employee reporting the injury.

. . .

B. Medical Attention

Employees must immediately notify their supervisor of the decision to seek medical attention as a result of any on-duty injury. This requirement is intended to facilitate work coverage and timely regulatory reporting.

* * *

D. Information concerning injuries

Employees with knowledge or information concerning an injury or accident to themselves, another or non-employee must report the information to their supervisor at the time of the occurrence so that emergency assistance and proper medical care can be promptly provided.

E. All incidents

Employees must immediately report to the train dispatcher or supervisor all incidents involving equipment and any other incident involving loss or damage to CSX property.

Mr. Arrington testified that he did not feel that he violated any of the rules listed in the charge letter. He completed his testimony with the following statement:

I notified, I feel I did correctly. I notified the employee in charge immediately after my injury. I didn't try to hide anything from anybody. Directly after notifying the foreman who is . . . immediately over my gang I then double checked my, trying to cover myself, I double checked and went to the assistant foreman and notified him also. I didn't try to hide injury. I had no way of contacting the roadmaster or assistant roadmaster. And I left that to my foreman to do so because he was only one that I knew of on our gang, the 6F04 that had the proper numbers and information to contact them. I thought he had contacted the roadmaster simply because he had me sign the statement for the exhibit 16, he asked me if I wanted the roadmaster to come and pick me up and take me to the emergency room, and I told him, "No." At that point I thought he had already talked to him and asked him if he needed to come out or not. So at that point I'm think the RJ, Mr. Allison had already talked to the roadmaster and was finding out whether I needed to go to the emergency room or not. And when my foreman told I should just go back to work, after signing this statement, that's what I did, I returned back to work and I kept

him posted over the next two days of how my arm was feeling. (Tr. 65).

The Organization representative asked Foreman Allison whether he would do anything differently today than he did on August 3rd. He answered, "The only thing I would have did differently, instead of, I would probably should have, I would have called someone up higher up than I was and that's the only thing I would have did differently." (Tr. 69).

In a closing statement in behalf of the Claimant the Organization asserts that the charge letter was vague and seemed to suggest that Mr. Arrington did not report that he had injured himself on the job. The evidence shows, however, the Organization argues, that he reported the injury both to his foreman, R. J. Allison, and to the assistant foreman, Chris Gable. Mr. Arrington did not require medical attention at the time the injury occurred on August 3, 2011, the Organization asserts, but agreed that if he did, he would notify Foreman Allison as required by the CSX Operating Rules.

When Mr. Arrington did require medical treatment, the Organization argues, he notified Foreman Allison before going to the doctor and also reported to Mr. Allison what the doctor said after the visit. With regard to Mr. Arrington's injury in 2008, the Organization asserts, he also reported the injury to his foreman who, in turn, contacted the supervisor, Mr. Burton. The Organization points to Foreman Allison's testimony that if he had it to do all over, he would have contacted his supervisor on August 3, 2011. The Organization also notes the testimony of other members of the Claimant's team that if they were injured, they would notify their foreman. The Organization also refers to the testimony of both the Claimant and his team members that they had never met Roadmaster Bland.

The Organization contends that there has been no testimony that supports the

Carrier's decision to charge Mr. Arrington and that "certainly no testimony has been provided to support the decision to discipline Mr. Arrington whatsoever, even though he had been withheld from service pending the results of this investigation." The Carrier, the Organization argues, has not met its burden of proving the charges against Mr. Arrington. The Organization requests that all references to any charges be removed from Mr. Arrington's record; that he be placed back into service immediately; and that he be made whole for any lost wages and benefits.

Following the close of hearing, by letter dated September 26, 2011, the Division Engineer notified Mr. Arrington that a thorough review of the transcript and exhibits demonstrated that he and his representative were allowed to present any witnesses and cross-examine all Carrier witnesses and to present testimony and documents on his behalf in accordance with his contractual due process rights. "Based on the evidence presented at the investigation," the Division Engineer concluded, "it is my decision that the discipline to be assessed is 30 days actual suspension, beginning September 2, 2011 up to including September 30, 2011."

The Carrier contends that the Claimant was afforded a fair and impartial investigation in accordance with the controlling Agreement. This Board, the Carrier asserts, has ruled that it has no obligation to provide documents in advance of hearing. There was no error, the Carrier contends, to permit the introduction into evidence of the Claimant's prior injury report form since it "was introduced to rebut the Claimant's statement that he did not know the injury reporting process." The document, the Carrier asserts, "showed the Claimant had properly reported an injury in the past, and knew the procedure."

On the merits the Carrier argues that it produced substantial, probative evidence

that the Claimant violated General Rules A, General Regulation GR-2, and General Safety Rule GS-5. The record, the Carrier contends, “demonstrates the Claimant knew the proper reporting procedure following an on-duty injury, and willfully failed to follow this procedure.” The Claimant, the Carrier asserts, violated General Safety Rule GS-5 A by failing to fill out a form PI-1A, which is specifically required to be filled out by paragraph A of Rule GS-5. Moreover, the Carrier argues, the Claimant was fully aware of his obligation to fill out that form since he had filled out that same form for a previous injury.

The Claimant violated paragraph B of Rule GS-5, the Carrier contends, by failing to notify his supervisor on Friday, August 5 of his decision to seek medical treatment. The Claimant notes the Claimant’s testimony that he called his doctor to make an appointment on Friday, August 5, but could not be seen until Monday, August 8. Notifying his foreman that he was going to be off work to have his shoulder checked out was not compliance with the rule, the Carrier argues, because the foreman is not the proper supervisor to report injuries to under Rule GS-5.

Even if the foreman were the proper supervisor, the Carrier asserts, the Claimant violated the rule because he waited two days after deciding to seek medical treatment to notify his foreman of his decision to do so. The Claimant violated Rule GR-2, the Carrier contends, “by being dishonest and willfully neglecting his duty.” This is so, according to the Carrier, because “the Claimant knew the proper reporting procedure for an on-duty injury, and had a duty to follow the Carrier’s procedures. . . .” Further, the Carrier maintains, “the Claimant actively persuaded his Foreman not to report the injury to the proper authorities. (Tr. p. 26). The Claimant,” the Carrier reasons, “was attempting to gain the cover provided by reporting an injury, without actually reporting the injury.”

The Carrier characterizes the Claimant's conduct as an "act of subterfuge" and "a form of dishonesty which prohibited the Carrier from timely investigating the root cause of the injury, in the interest of safety."

The discipline assessed, the Carrier asserts, was appropriate and fully justified. It notes that under the Carrier's IDPAP, dishonesty and the late reporting of a personal injury are Major Offenses for which an employee may be dismissed for a single occurrence. The Claimant committed both offenses, the Carrier argues, "by failing to properly report an on-duty injury, and then attempt to hide behind his inadequate reporting as a defense to these charges." The Carrier requests the Board to deny the claim.

In this case, as in PLB No. 7120, Award No. 100, the Claimant was charged with violations of more than one rule or regulation. Instead of making a specific finding of whether the Claimant was guilty of violating any particular rule or regulation and, if so, of which, the Division Engineer merely stated that the Claimant's contractual due process rights were observed, all objections were properly addressed in the course of the hearing, and that based on the evidence presented in the investigation, he was assessing an actual suspension, which in this case was 30 days.

In Award No. 100, this Board stated, "Neither the Claimant, the Organization, or the Board should be put in the position of having to guess what exactly the decision of the Carrier was in a particular case with regard to the charges against the Claimant." That same observation applies in this case also. In its submission the Carrier argues here, for example, that Claimant Arrington violated General Regulations GR-2 in that he was dishonest and willfully neglectful. Dishonesty is covered by item 4 of General Regulations GR-2 and willful neglect, by item 5 of GR-2.

Nowhere in the decision letter, however, is there any finding or ruling that the Claimant violated GR-2 or that he willfully neglected his duty or that he was dishonest. This Board has carefully perused the record and concludes that there is no substantial evidence in the record of dishonesty or willful neglect of duty. The dishonesty, according to the Carrier, was that Mr. Arrington “actively persuaded his Foreman not to report the injury to the proper authorities (Tr. p. 26)” and “was attempting to gain the cover provided by reporting an injury, without actually reporting the injury.” The Carrier states that “[t]his act of subterfuge was a form of dishonesty which prohibited the Carrier from timely investigating the root cause of the injury, in the interest of safety.”

The Board does not agree that the evidence establishes that the Claimant actively persuaded his foreman not to report the injury to the proper authorities. Page 26 of the transcript contains Foreman Allison’s testimony that he asked Mr. Arrington if he (Arrington) wanted him (Allison) to call the Roadmaster to take Arrington to the doctor to have his injury checked out, and that Mr. Arrington said no, that “he didn’t want to get the Roadmaster involved and he didn’t want to go to the doctor at that time.” Mr. Arrington, Mr. Allison testified, wanted to work and see how the injury panned out the rest of the day.

The Board finds no “active persuasion,” as contended by the Carrier, for Foreman Allison not to report the injury to the Roadmaster. The most reasonable interpretation of Mr. Allison’s testimony on page 26 of the transcript, when read together with the statement prepared contemporaneously by Mr. Allison, is that Mr. Arrington did not want the Roadmaster to take him to the hospital. That statement, written in Mr. Allison’s hand, stated:

J. E. Arrington felt a pain in his left shoulder

he said he didn't want to go to the doctor he was
helping the backhoe operator load his machine
when he felt it the pain

There is absolutely no suggestion in the statement that Mr. Allison wrote for Mr. Arrington's signature that Mr. Arrington did not want Mr. Allison to report the injury to the Roadmaster.

The testimony of Mr. Hackler, who heard the entire conversation and was a disinterested witness, is consistent with the written statement prepared by Mr. Allison and not Mr. Allison's oral testimony at the hearing. According to Mr. Hackler's testimony, Mr. Arrington did not say that he didn't want to get the Roadmaster involved. Thus Mr. Hackler testified that "Mr. Allison asked him if want to call the roadmaster and take him to the hospital and he told him he didn't need any medical attention, he just wanted to report it to him to, in case something did happen, that he went through the right steps to report it." (Tr. 54).

Claimant Arrington testified credibly that he thought that Mr. Allison had already reported the incident to the Roadmaster (Tr. 64, 65). Mr. Arrington explained that after he told Foreman Allison about his injury Mr. Allison went into the truck and wrote the statement (Tr. 59). Mr. Allison did not deny that testimony, and it is plausible because it makes more sense that he would write a statement sitting down in the privacy of his truck than standing up in conversation with another person. It is also more probable that he would have the paper for writing the statement in the truck than on his person. While alone in the truck there was nothing to prevent Mr. Allison from calling the Roadmaster to report the injury.

According to the Claimant's testimony, after writing the statement in the truck, Mr.

Allison called him over to sign it and asked him before he signed it if he wanted the Roadmaster to come and pick him up and take him to the emergency room. (Tr. 59). At that point, Mr. Arrington explained, he thought that Mr. Allison had already spoken to the Roadmaster, who had asked Mr. Allison if he (the Roadmaster) had to come out to take him (Arrington) to the emergency room. (Tr. 65). The fact that immediately after returning from the truck Mr. Allison asked Mr. Arrington if he wanted the Roadmaster to take him to the hospital was a reasonable basis for Mr. Arrington to believe that Mr. Allison had just finished talking to the Roadmaster who wanted to know if Mr. Arrington wished to go to the hospital. Mr. Arrington, according to his testimony, told Mr. Allison, no, that he did not want to be taken to the emergency room.

According to the testimonies of both the Claimant and Mr. Hackler, there was nothing in the conversation between the Claimant and Mr. Allison that could reasonably be interpreted as an effort by the Claimant to persuade or even influence Mr. Allison not to report the incident to the Roadmaster. It should also be noted that the record shows that Mr. Allison was not careful to be absolutely accurate regarding the facts stated in his testimony. The Board does not believe that there was an intentional effort on Mr. Allison's part to prevaricate but that nevertheless he was not sufficiently attentive to make sure that the testimony he gave was completely accurate.

Thus, Mr. Allison's testimony on a material point shows his lack of accuracy. The question of the tasks performed by Mr. Arrington at work the day after his reported injury is a material factual issue in the case because it bears on whether he really injured his shoulder on August 3, 2011, as he reported to his foreman and the assistant foreman. On direct examination the conducting officer asked Mr. Allison what kind of work Mr. Arrington did on Thursday, August 4, 2011. He answered, "He ran the jackhammer

basically most of that day.” The conducting officer then asked, “And what type of task is that?” Mr. Allison explained, “That’s Matweld hammer; that’s drives spikes.” (Tr. 26).

The conducting officer also asked Claimant Arrington what work he performed on August 4, 2011. Mr. Arrington described the work that he did, noting that he was favoring his injured arm. The conducting officer then asked, “Did you operate the spike drive as Mr. Allison had stated earlier?” Contradicting Mr. Allison, Mr. Arrington answered, “No sir.” The conducting officer was obviously interested in whether the Claimant was truly injured because he followed up with a question whether the Claimant had any difficulty driving the 300 miles to his home Thursday night with his shoulder condition. The Claimant testified that he did have difficulty.

Later in the hearing the conducting officer recalled Mr. Allison to testify. First he asked Mr. Allison what work Mr. Arrington performed on August 3, 2011. After Mr. Allison answered, the conducting officer asked, “What activity did he perform on August 4, 2011.” Contradicting his earlier testimony that Mr. Arrington had run the jackhammer most of that day, Mr. Allison stated, “On August 4, 2011 he strung out some spikes and he ran the jackhammer a little bit.” (Tr. 66). This Board has not noticed any self-contradictory testimony on the part of Claimant Arrington in this proceeding.

The Board finds that the Carrier has failed to prove by substantial evidence that Claimant Arrington violated General Regulation GR-2 in that he was dishonest.

With regard to the other alleged Major Offense on the Claimant’s part, the record shows that the understanding of the Claimant, Foreman Allison, and the other team members was that in case of injury, the injury was to be reported to Foreman Allison. Foreman Allison, who has worked on the railroad 37 years, testified that during the time that he was a machine operator or a trackman, if someone got hurt, the injured employee

would notify the foreman or the assistant foreman. (Tr. 28). In the present case, he testified, it was proper for Mr. Arrington to report his injury to him (Foreman Allison). (Tr. 29). Force 6F04 Assistant Foreman Chris Gable testified that Mr. Arrington acted properly and complied with the rules in regard to an injury when he notified Track Foreman Allison of his injury. (Tr. 50).

Travis Hackler, another assistant foreman on the 6F04 gang, testified that “the way I ‘ve understood for us to do it” is for Mr. Arrington to report an injury that he had to Foreman Allison and for Foreman Allison in turn to be required to contact supervision (Tr. 54). Richard L. Banks, the backhoe operator who worked with force 6F04, testified, “If I got injured I’d inform my foreman.” (Tr. 47).

In PLB 7120, Award No. 98, the applicable rule required that an employee who wished to leave work early notify his supervisor. The claimant left work early without notifying his supervisor and was disciplined. The determinative issue in the case was who was supposed to notify the supervisor. When asked that question by the conducting officer, the supervisor answered, “Either the foreman or [the claimant] himself.” Id. at page 8.

In PLB No. 7120, Award No. 10 the claimant, a foreman, was charged with violation of General Safety Rule GS-5 E by failing to report a damaged switch to his supervisor. In upholding the discipline, this Board stated, “As the Foreman of his team, the Claimant had the primary responsibility to report any damage that he personally, or any member of his team, caused to company equipment.” Id. at page 11. The Board also stated in the same case, “The Claimant’s failure to notify his supervisor of the damage to the switch so that an appropriate investigation could be started was a violation of accepted procedure at the Carrier.” Id. at page 12.

In the present case Claimant Arrington acted in accordance with the prevailing understanding of his team that an injury was to be reported to the foreman, who had the primary responsibility of notifying supervision of the reported injury. Foreman Allison, in effect, acknowledged that he had this responsibility when he testified that if the matter came up today, the thing that he would have done differently is “I would have called someone up higher up than I was.” (Tr. 69). In the Board’s opinion Claimant Arrington substantially complied with General Safety Rule GS-5.

In another set of circumstances it might well be reasonable to expect an employee to give direct notification to his supervisor rather than his foreman. For example, that might apply in a situation where the employee and the supervisor are in direct contact on a daily basis. But that was not the case here. Claimant Arrington had no contact with either the Roadmaster or the Assistant Roadmaster in the performance of his regular duties and responsibilities. Roadmaster Bland testified that he had never met Mr. Arrington (Tr. 16). Assistant Roadmaster Small testified that Mr. Arrington received his day-to-day instructions from Mr. Allison. (Tr. 22). Foreman Allison testified that he did not think that Assistant Roadmaster Small was around on the day of the injury, “I didn’t see him none during that time,” he testified (Tr. 31). Claimant Arrington testified that he did not have either the Roadmaster’s or the Assistant Roadmaster’s phone number and that he had never met either of the two (Tr. 58). Although Mr. Small testified that he met Mr. Arrington “[t]he first day that the tie teams was on the Aberdeen Subdivision,” (Tr. 21), he gave no testimony that he had any work-related interchange with Mr. Arrington. Rather, as noted, he testified that Mr. Arrington received his day-to-day instructions from Foreman Allison. In the circumstances of the present case, the Board finds, it was proper for Mr. Arrington to report his on-duty injury to Foreman Allison and to expect the

foreman, as the primary person in charge, to make the appropriate notification to supervision.

The problem was that there was a breakdown in the reporting and notification procedure when Foreman Allison failed to notify the Roadmaster or Assistant Roadmaster of the injury reported to him by Mr. Arrington. Mr. Arrington cannot be blamed for that. With regard to notifying his supervisor of his decision to seek medical attention, the Board is of the opinion that Mr. Arrington substantially complied with Rule GS-5 B when he notified Foreman Allison of his decision to seek medical attention the day before his appointment with the doctor.

Rule GS-5 B states in the second sentence, "This requirement [to immediately notify their supervisor of the decision to seek medical attention] is intended to facilitate work coverage and timely regulatory reporting." No evidence was presented that one day's notice would not have been sufficient to protect the Carrier's interests with regard to work coverage and regulatory reporting. In addition, here again, the foreman failed in his responsibility when he neglected to notify the Roadmaster or the Assistant Roadmaster until the next day of the Claimant's decision to seek medical attention for his injury.

With regard to Form PI-1A, there is no evidence that for his prior injury, which occurred more than three years before the present injury, Mr. Arrington requested the form and then filled it out. In this Board's experience it is the supervisor who normally makes the employee aware of the need to complete the form and who provides the form. See, for example, Award No. 99 at page 3, where it was the Roadmaster who had the claimant complete the Form PI-1A.

The totality of the evidence in this case shows that the Claimant made a good faith

effort to comply with General Safety Rule GS-5. He reported the injury to his foreman immediately following the occurrence. The record establishes that he and the other team members understood that this was the way that injuries should be reported. There is no evidence that any supervisor or manager had ever told the Claimant or anyone else on Foreman Allison's team anything to the contrary. The Claimant notified his foreman a day before the appointment of his intention to seek medical attention for his on-duty injury. He notified his foreman of the doctor's diagnosis shortly after seeing the doctor.

This Board finds, consistent with its finding in PLB No. 7120, Award No. 10, that Foreman Allison, once notified by Mr. Arrington of his on-duty injury, as foreman of the team, had the primary responsibility to report the incident to the Roadmaster or the Assistant Roadmaster. There is no substantial evidence that Mr. Arrington in any way persuaded or induced him not to report the injury. It was the foreman's failure to provide timely notification to a supervisor of the Claimant's on-duty injury that was the proximate cause of a late completion of Form PI-1A in this case.

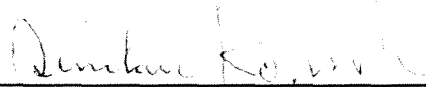
Since the Claimant reported his injury in a timely manner and was not dishonest, there was no basis for removing him from service. Nor has the Carrier proved by substantial evidence that the Claimant was guilty of any of the charges alleged against him. The Board concludes therefore that the Claimant is entitled to be made whole for all lost wages and benefits as a result of his removal from service and the disciplinary suspension assessed against him. No back pay is due for the period of time when the Claimant was unable to work because of his shoulder injury. In accordance with Rule 25, Section 4, the discipline shall be stricken from the Claimant's record.

A W A R D

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the date the signed Award is transmitted to the parties.



Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
March 5, 2012