

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION

Case No. 23

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant C. E. Bridegan as a result of investigation held on November 6, 2001, in connection with Claimant's alleged conduct unbecoming an employee, falsification of an injury in an attempt to defraud the Carrier, and the late reporting of the alleged incident. File No. D42705601; Carrier File No. 12 (01-0683).

FINDINGS:

Claimant C. E. Bridegan was employed by the Carrier as a trackman at the time of this claim.

On March 2, 2001, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with an incident that allegedly occurred at Garret, Indiana, on February 5, 2001, which the Claimant reported on February 15, 2001, as an alleged on-duty injury. The Carrier charged the Claimant with conduct unbecoming an employee, falsification of an injury in an attempt to defraud the Carrier, and the late reporting of the alleged incident.

The initial hearing was postponed indefinitely and was rescheduled to take place on November 6, 2001. The Claimant was withheld from service pending the outcome of the investigation. On November 21, 2001, the Carrier notified the Claimant that he had been found guilty of all charges in that there was no evidence that the Claimant had injured himself and that the Claimant was deliberately evasive regarding the circumstances of the incident in question.

The Claimant was dismissed from the service of the Carrier effective November 21, 2001.

The Organization thereafter filed a claim on behalf of the Claimant, challenging the dismissal. The Carrier denied the claim.

The Carrier argues that the Claimant allegedly hurt his back on February 5, 2001, and yet did not fill out a formal report until nearly ten days later. The Carrier points out that it is the Claimant's responsibility to timely and properly report an injury. The Carrier maintains that the Claimant had no legitimate excuse justifying the late report of his injury. However, the Carrier contends that because the Claimant continued to work beyond February 5 without reporting anything, the Claimant probably did not suffer an injury on Carrier property and merely sought to defraud the Carrier by reporting an alleged injury at a later date.

The Organization argues that the Claimant did not intentionally delay the reporting of an injury that occurred on February 5. The Organization contends that the Claimant is a twenty-one year employee of the Carrier and had never suffered an injury until the incident in question. The Organization points out that the Claimant believed that his injury would go away and he also did not want to ruin his record by needlessly reporting an injury that would heal in time. The Organization also argues that the Carrier is merely speculating on the circumstances involved in this situation and that the Carrier provided no proof of its allegations of falsification and fraud.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has presented sufficient evidence to support the guilty finding of only one of the three charges against the Claimant. The record is clear that the Claimant was injured on February 5, 2001, while attempting to start a rail saw. The Claimant complained about pain in the neck

immediately after performing that task and his complaints were substantiated by a fellow employee, Rick Edsall. However, the Claimant's mistake was that he failed to formally report the injury to the Carrier until February 12, 2001. The Claimant's excuse for not immediately reporting the incident was that he "did not want to be the man who upset the 100 days without an injury. I just felt like I did not want to be that guy."

It is clear that the Claimant has an obligation to promptly report any injury. In this case, the Claimant did not fill out the formal report until seven days after the incident in question. For that, he deserves discipline.

However, the Claimant was also charged with two very serious offenses. The Carrier charged that the Claimant engaged in conduct unbecoming an employee of the Carrier and falsification of an injury report in an attempt to defraud the Carrier. There is absolutely no evidence of either of those two very serious offenses in the record. Hence, the hearing officer erred by finding the Claimant guilty of those offenses.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

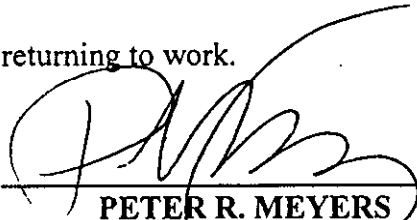
The Claimant in this case had been employed by the Carrier for twenty-one years prior to this incident. A review of his disciplinary record reveals only a reprimand in 1980 for not wearing a hard hat. Other than that, his record was clean. This Board recognizes that it is a serious offense for an employee to not promptly report an injury. However, there is not just

cause to discharge this Claimant for violating that rule.

Given the lengthy seniority of the Claimant, this Board must find that the Claimant shall be reinstated to service by the Carrier. Since the record does not show whether or not the Claimant is currently capable or performing any work, there is no basis upon which to award him back pay. The Claimant shall be reinstated to service without back pay, and he must pass the Carrier's physical examination before returning to work.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay in accordance with the above decision. The Claimant must pass a physical examination prior to returning to work.



PETER R. MEYERS
Neutral Member

Dated: 8/06/02