

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 26

STATEMENT OF CLAIM:

Appeal of dismissal of Claimant H. Langston as a result of investigation held on October 15, 2002, in regards to Claimant's alleged failure to perform his duties safely and properly, failure to promptly report an accident, making false statements concerning matters under investigation, falsification of an alleged personal injury, and conduct unbecoming an employee of the Carrier.

FINDINGS:

The Claimant was employed by the Carrier as a track foreman at the time of this claim.

On June 27, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and the Claimant's responsibility in connection with an alleged incident at Barr Yard in Riverdale, Illinois, on June 7, 2002, in that, while crossing through a train standing on the 3rd Main, the Claimant allegedly bumped his knee, which he reported to his supervisor on the morning of June 17, 2002, after which it was determined that he had a broken kneecap. The Carrier charged the Claimant with failure to perform his duties safely and properly, failure to properly and promptly report the accident/incident, being willfully deceitful, making false statements and/or concealing facts concerning matters under investigation, falsification of an alleged personal injury in an attempt to defraud the Carrier, and conduct unbecoming an employee of the Carrier.

The hearing in this matter was initially postponed at the request of the Organization until the Claimant was medically qualified to return to service, but the Carrier withheld him from

service pending the outcome of the investigation scheduled for October 15, 2002. The hearing took place on the scheduled date and on November 5, 2002, the Carrier notified the Claimant that he had been found guilty of all charges based on the evidence produced at the hearing and the testimony of two physicians attesting to the improbability that the Claimant's condition on June 17, 2002, could have existed since June 7, 2002, as alleged. The Carrier assessed discipline of dismissal effective November 5, 2002.

The Carrier argues that based on the Carrier's doctors' evaluations of June 17, 2002, the Claimant's injury could not have occurred on June 7, 2002, as alleged and that his condition was *not work-related*. The Carrier contends it would have been impossible for the Claimant to continue to work with his alleged injury beyond June 7, 2002, considering the type of work he normally performed. In addition, the Carrier maintains that, during the investigation, the Claimant admitted that he failed to timely report his alleged on-duty injury. The Carrier contends that after the alleged incident, the Claimant continued to work and had no difficulty in walking or throwing a switch while performing service. The Carrier therefore claims that the injury occurred somewhere other than work and some time after June 14, 2002. The Carrier also maintains that the Organization's witnesses lacked the necessary credibility to overturn the evidence presented by the Carrier. The Carrier argues that the Claimant's dishonesty concerning an alleged on-duty injury is a serious matter and that the discipline of dismissal issued to the Claimant was proper.

The Organization contends that several Carrier employees witnessed the Claimant walking with a limp shortly after his injury which occurred on June 7, 2002, and that Carrier employees often work with various aches and pains associated with some type of on-the-job activity before they realize their condition is worse and requires a doctor's visit. The

Organization maintains that it is not unusual for Carrier employees to continue to work and wait a period of time to determine the extent of their injury. In addition, the Organization claims that the Claimant, who is a long-term employee, was not dishonest in providing the date of his injury. The Organization argues that the Claimant had no reason to not report his injury as it actually occurred and initially believed that he merely bumped his knee. The Organization maintains that the Claimant does not have a history of injuries in his record. The Organization also points out that the Claimant's daily work activities and physical exertion vary from week to week; and the week before he reported his injury, he worked a position that enabled him to work without a lot of physical exertion. The Organization contends that the Claimant actually worked and continued to work the week after his injury occurred because he believed the pain in his knee was going to go away.

The parties being unable to resolve their dispute, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to promptly report an accident or injury. On page 48 of the transcript, the Claimant was asked if he failed to properly and promptly report the accident or incident, and he responded, "I will agree will agree with that." Consequently, with that admission, this Board finds that the Claimant was in violation of the rule.

With respect to the charge that the Claimant failed to perform his duties safely and properly and made false statements and concealed facts concerning matters under investigation, this Board has reviewed the entire record and transcript and we find that there is insufficient evidence to support those two charges. It is fundamental that the Carrier has the burden of proof in all discipline cases. In this case, there is simply insufficient proof in this record that the

Claimant failed to perform his duties safely and properly. We have held on numerous occasions that just because an injury occurred is insufficient proof that the employee performed his duties unsafely. There must be other proof that meets the required standard of proof. Similarly, there is insufficient evidence in this record to support the finding that the Claimant was guilty of making false statements and/or concealing facts concerning matters under investigation.

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 actions to have been unreasonable, arbitrary, or capricious.

Because the Claimant was initially found guilty of three very serious charges, the Carrier terminated his employment. This Claimant had seniority of over thirty years with the Carrier. This Board has found that he was only guilty of one of the three violations of which he was found guilty by the Carrier. Consequently, this Board reduces his discipline to a lengthy disciplinary suspension. We order that the Claimant be returned to work, but without back pay on or before December 24, 2002. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. There was no just cause to terminate the Claimant's employment and he shall be returned to service on or before December 24, 2002, but without back pay. The period that the Claimant was off shall be considered a lengthy

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disciplinary suspension.



PETER R. MEYERS

Neutral Member

Dated: _____

12/14/02