

PUBLIC LAW BOARD NO. 6394

AWARD NO. 48

Parties to Dispute:

Statement of Claim: "Claim of the System Committee of the Brotherhood that"

1. The dismissal of the Claimant K.D. Snapp for the alleged failure to report a personal injury as required in the Safety and General Conduct Rule N on September 9, 2009 when it was confirmed that you have alleged to have been injured on November 2, 2007, while at work in Collinsville, Ohio, but have not reported it to your immediate supervisors and completed and signed a written report of the incident using the prescribed form, as stipulated by the rule that was based on unproven charges and was arbitrary, capricious and in violation of the Agreement (Carrier's File MW-FTW-09-45-BB-426)

2. As a consequence of the unjust dismissal (s) described in Part I above, Mrt. Snapp shall be made whole and restored to the service of the Carrier, with pay ofor all lost time, seniority and vacation unimpaired."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

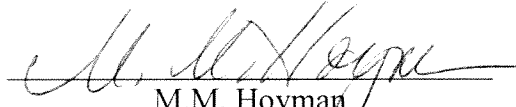
The Claimant seeks reinstatement to service after being dismissed for failure to report a work related injury that occurred on November 2, 2007 but was not reported to a direct supervisor until September 9, 2009. On January 28, 2008 the Claimant began sick leave in order to undergo treatment for a pinched nerve, which at the time he did not state was due to a workplace injury. In August of 2009 the Carrier's Medical Department determined that the Claimant could return to work. Although the Claimant's attorney had filed with the Carrier's Claims department a notice regarding his workplace injury, the Claimant's immediate supervisors were not aware of the injury at the time it occurred. The Carrier states the Claimant's failure to notify his direct supervisors at the time of the injury is a violation of Rule N of the agreement.

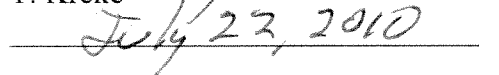
The Organization's primary objection to the dismissal is that the Carrier under Rule 21 did not hold a hearing when it first became aware of the injury via the suit filed with the Claims Department by the Claimant's Attorney. However, the Board concurs

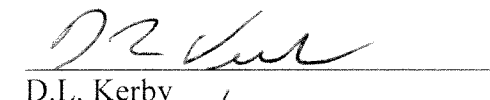
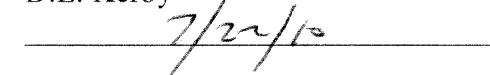
with the reasoning cited in BMWED v. BNSF, 3 NRAB Award 37885 (Carrier Exhibit C), that the first knowledge begins when "...knowledge is acquired by a Carrier official in the affected employee's chain of supervision who has the authority to initiate an investigation." The first employee in the Claimant's chain of supervision that could begin an investigation attained first knowledge on September 9, 2009 and held a hearing on October 7, 2009.

This Board finds there is sufficient evidence presented by the Carrier that the Claimant violated Rule N of the agreement by not reporting a workplace injury to his immediate supervisors. Considering all the circumstances, we conclude that the Carrier had cause to terminate its employment relationship with the Claimant.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke

Date Signed


D.L. Kerby

Date Signed

Issued at Chicago, Illinois on June 19, 2010.