

**BEFORE PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CSX TRANSPORTATION, INC.**

**Case No. 18**

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

1. The discipline [ten (10) day suspension] imposed upon Mr. D. Davis in connection with March 30, 2001 charges of failure to maintain a proper three (3) point contact while on mounted equipment and failure to promptly report the incident was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File H41309001/12 (01-0294) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant D. Davis shall now be compensated for all time lost and his record cleared of the charges leveled against him.

**Background:**

On Friday, March 30, 2001 at about 8:30 a.m., Claimant D. Davis, a track employee, was positioning a container of lubricant in the bed of a truck when his feet slipped off a mounting step. As he slipped, he grabbed onto a rail with his right hand and swung down, separating his right shoulder. His supervisor, Roadmaster W. Ward, was at a safety meeting, an hour's drive away, as was Maintenance of Way Supervisor R. Hardy. Claimant and co-employee T.R. Fink, with whom he had been working, immediately sought medical attention for Claimant because he was experiencing great pain in his shoulder. Initially, they went to a medical office, but were told that Claimant could receive no medical assistance unless accompanied by his supervisor. Neither Claimant nor Fink had Roadmaster Ward's cell phone number, so they could not call him. Unable to find an injury report form, Claimant wrote a note to Ward, advising him that he had injured his shoulder at work and would be seeing his doctor about it. Because Ward was not

in his office, Claimant slipped the note under his door. Claimant then drove himself to his personal doctor. Ward found the note when he returned to his office the following Monday morning.

By letter dated April 11, 2001, the Carrier notified Claimant that a hearing and investigation would be held on April 26, 2001 regarding the shoulder injury Claimant incurred on March 30, 2001. In the letter, Claimant was charged with failure to perform his duties safely and properly, failure to maintain a three point contact while on the back of the truck, and failure to promptly report the alleged accident and personal injury. Following the hearing, the Carrier advised Claimant in a June 5, 2001 letter that he would be suspended for ten days for having failed to perform his responsibilities as charged. In a June 11, 2001 letter, the Organization appealed the Carrier's decision.

**Carrier's Position:**

The Carrier asserts that Claimant was afforded a fair and impartial hearing, and that the Carrier met its burden of producing substantial evidence of Claimant's culpability. Moreover, the Carrier emphasizes that Claimant admitted at the hearing that, if he had an opportunity to perform the task again, he would not do it in the same way, thereby conceding the safety violation. In addition, the Carrier cites Claimant's concession to Roadmaster Ward that he did not even consider reporting his injury immediately to him. In support of its argument that a ten-day suspension was the appropriate corrective action, the Carrier cites *Award No. 169, Special Board of Adjustment No. 988* and *Award No. 23, Public Law Board No. 5471*.

**Organization's Position:**

The Organization claims that the Carrier failed to meet its burden of proof that Claimant engaged in any safety or reporting violations. In that connection, the Organization asserts that, before the incident on March 30, 2001, no supervisor took issue with the way Claimant positioned himself on the truck. In addition, the Organization argues that the evidence showed that Claimant continually kept a three-point stance prior to the incident. The Organization also cites the testimony of Assistant Regional Engineer of Track A. Maust that an injured employee such as Claimant should seek medical attention before doing anything else. Because Claimant tried to notify Roadmaster Ward in writing even while he was in pain and before he saw his personal doctor, the Organization asserts that Claimant did everything he could have done to notify Ward. That is particularly true, according to the Organization, because Claimant did not have Ward's cell phone number until it was provided to him after the March 30, 2001 incident.

**Findings:**

The Carrier asserts that Claimant engaged in safety and reporting violations by injuring his shoulder while positioning a container of lubricant in the back of a truck and by not notifying his supervisor of the injury until three days later. In contending that it met its burden of proving that Claimant engaged in the safety and reporting violations, the Carrier relies heavily on alleged admissions of Claimant. Thus, the Carrier cites Claimant's testimony that he would do things differently if he had an opportunity to position the container again. The Carrier, however, failed to elicit from Claimant how he would have done things differently. Merely stating he would do things differently is not an admission that he acted unsafely on the day in question. Moreover,

although the Carrier charged Claimant with failing to maintain three-point contact, the evidence established the contrary – that Claimant did maintain three-point contact right up until the time that his foot slipped. Accordingly, the Carrier failed to meet its burden of proving that Claimant failed to maintain three-point contact or otherwise acted in an unsafe manner.

Likewise, the Carrier erroneously has relied on Claimant's alleged "admission" with respect to reporting the injury. The Carrier correctly states that Claimant testified that he did not think to report the injury to his supervisor immediately. The reason, however, was that Claimant was in great pain and therefore sought immediate medical assistance. Equally importantly, before he went to his personal physician for medical assistance, Claimant wrote a note to Roadmaster Ward, advising him that he had injured his shoulder and that he probably would be seeing a doctor about it. On March 30, 2001, the date of the injury, Claimant put the note under the office door of Roadmaster Ward, who read it upon his return to the office on Monday, April 2, 2001. Claimant could not telephone Ward on the day of the incident because he did not have Ward's cell phone number, which was provided to employees only after the incident. Likewise, Claimant did not complete a formal injury report until April 2, 2001 because the forms were not available to him until then. In light of these facts, Claimant took all reasonable steps to notify Roadmaster Ward of his injury on March 30, 2001.

Because the Carrier failed to establish that Claimant acted unsafely or unreasonably delayed reporting the injury to Roadmaster Ward, the claim is granted. The Carrier is directed to

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make Claimant whole for his ten-day suspension and to clear Claimant's records of the charges leveled against him in connection with the March 30, 2001 events referred to above.

**Award:**

The claim is granted. The Carrier shall make Claimant whole for the ten-day suspension imposed upon him, and shall clear Claimant's record of the charges leveled against him in connection with the above-described events on March 30, 2001.

  
CARRIER MEMBER

DATED: May 10, 2004

  
JOAN PARKER, Neutral Member

  
ORGANIZATION MEMBER

DATED: 5-10-04