

PUBLIC LAW BOARD NO.7008

PARTIES TO THE DISPUTE:

CSX TRANSPORTATION, INC.

- and -

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the June 1, 1999 Agreement, the following will serve as our appeal of discipline assessed to BMW employee J.V. Williams, ID#****, as a result of the hearing held on March 13, 2006 in Atlanta, GA.

The Carrier failed to prove the charges placed against Claimant: therefore, the charge letter, discipline, and all matters relative thereto should be removed from Claimant's personal record and Claimant should be made whole for any losses suffered.

OPINION OF BOARD:

J. V. Williams (hereinafter referred to as "Claimant") was hired by CSXT on July 31, 2003, in the Engineering Department. At the time this issue arose, the Claimant was assigned as an Assistant Track Inspector headquartered at Tilford Yard, Atlanta, GA.

According to the record, on December 5, 2005 the Claimant approached Roadmaster H. White and informed him that he had incurred an injury, date uncertain, which caused him to have "back spasms and a sore left foot." Following his conversation with the Claimant, the Roadmaster found out that the Claimant had previously reported his injury, providing a written statement

regarding same to Engineer of Track S.D. Frazier, on the prior workday, December 4, 2005. In the statement the Claimant alleged he sought medical attention on October 20, 2005 because of a "sharp pain" in his left heel. The Claimant further stated that he began receiving steroid shots "for his back" thereafter.

The Claimant was instructed to see another physician to determine the cause(s) of his discomfort. Although Claimant did as he was directed, he did not return the doctor's report, dated December 8, 2005, until December 19, eleven (11) days after he was examined. Due to certain "inaccuracies" in the dates listed in the physicians write-up, Claimant Williams was instructed to provide a third written statement regarding his alleged injury(ies).

In a December 19, 2005 statement the Claimant changed his story again, alleging that the injury actually occurred on June 9, 2005, while he was bending down to pick up a wrench from the ground. The Claimant further reported that he subsequently felt a "sharp pain" in his left heel, which continued to become "quite sore". According to the Claimant, by October his heel had become "quite painful", ergo, he began seeking medical treatment in November 2005.

Due to Claimant's "inconsistencies" between and among each statement, by letter dated December 20, 2005, the Claimant was instructed as follows:

"You are directed to attend a formal investigation on Wednesday, January 4, 2006 at the Division Conference Room, with you as Principal. The purpose of the investigation is to develop the facts and place responsibility, if any, in connection with information I received on or about December 19, 2005, concerning an alleged injury that you sustained on or about June 2005, while working as a Asst. Track Inspector. In connection with the above, you are charged with late reporting of an alleged injury and possible violations of CSXT Operating Rules, General Rule A and

General Regulation GR-2 (formerly referred to as Operating Rule A and 501) as well as CSX Safe Way General Safety Rules-Rights and Responsibilities.”

After three (3) postponements, the investigation was held, to completion, on March 13, 2006, with the Claimant and his representative in attendance. Following the investigation, Carrier found Claimant guilty as charged, and as a result, he was assessed a ten (10) day overhead suspension (for the period of one (1) year).

The Organization protested the discipline, arguing that the hearing was held outside of the prescribed 30-day time limit provided for in the Agreement. In a second procedural objection, the Vice General Chairman contended that the hearing transcript was “devoid” of the original charge letter dated December 20, 2005. With respect to the merits of the dispute, the Vice General Chairman maintained that the “alleged injury was reported at the request of the Carrier, not the Claimant”. Finally, the Vice General Chairman averred that the Carrier failed to prove the charges against the Claimant, however, did not specify how Carrier did so.

Carrier denied the claim maintaining that the Claimant was given proper notice of the charges and afforded a fair and impartial investigation in which he participated. With regard to the Organization’s allegation regarding the 30-day time limit, Carrier provided documentation of the previous charge letters, one dated December 20, 2005; as well as three additional documents stating that the hearing had been postponed. Since the Organization and the Claimant were each informed of the postponements, the Organization’s argument is without merit, according to Carrier.

With regard to the merits of the dispute, Carrier points to the numerous “inconsistencies” in the Claimant’s written statements and asserts that: “The evidence adduced at the March 13, 2006 hearing clearly established that Claimant Williams was guilty as charged. The false reporting of an

injury is nothing short of dishonesty, and the Carrier cannot condone such actions.”

Despite an April 20, 2006 conference and continued efforts between the Parties on the property, the dispute was not resolved. Therefore, it is now before this Board for adjudication.

At the outset the Organization asserted certain procedural objections which it maintained were fatal to Carrier’s case. The first objection concerned the 30-day time limit imposed by the Agreement, and the second, that Carrier failed to include a copy of the Charge Letter in the transcript.

With regard to the first assertion, the record demonstrates that Carrier provided documentation of the previous charge letters: one dated December 20, 2005, a second letter dated January 9, 2006, which informed the Claimant that the hearing was postponed at the Organization’s request; a letter dated January 17, 2006, stating that the hearing was postponed once again; and, a letter dated February 26, 2006 stating the hearing was postponed one final time. Since the Organization and the Claimant were each informed of the postponements, the Organization’s argument in that regard is without merit.

With respect to the absence of the December 20, 2005 charge letter in the transcript, Claimant was asked, at the outset of the hearing, whether he had received the correspondence, to which Mr. Williams replied in the affirmative. Therefore, even if, *argued*, the letter was missing, Claimant, and the Organization were aware of its existence, and any oversight in that regard does not constitute a fatal flaw in Carrier’s case.

Turning to the merits of the issue, Claimant first reported his injury to a Carrier Official on December 4, 2005. In a written statement he submitted on that same date, the Claimant maintained that he had injured himself on October 20, 2005, feeling a “sharp pain” in his left heel, followed by

the onset of "back pain". On December 5, 2005, the Claimant informed a second Carrier Official of the injury, date uncertain, and did not indicate that he had reported the injury the day before.

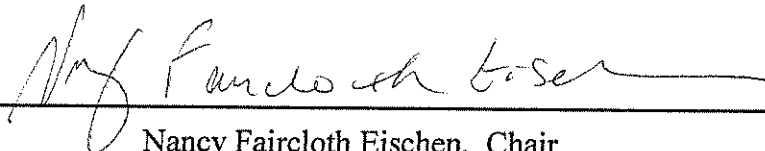
Due to the "inconsistencies" in the Claimant's initial reports, Carrier instructed Claimant Williams to see a second physician, which he did, on December 8, 2005. However, the Claimant did not submit the second physician's report until December 19, 2005, eleven (11) days after he was examined. Again, due to certain date inaccuracies, Carrier directed the Claimant to submit another written statement regarding his alleged injury(ies). In a December 19, 2005 statement, the Claimant again changed his story, this time asserting that the injury "actually" occurred on June 9, 2005, when he was "bending down" to pick up a wrench. According to the Claimant, he felt a "sharp pain" in his left heel which "continued to become more sore" forcing the Claimant to seek treatment in November 2005.

Clearly, the Claimant's explanation and time line of events was considerably different from each individual written statement. In that connection, Claimant's testimony at the investigation was both vague and inconsistent, thereby bolstering Carrier's case in that regard. Given the record evidence, in conjunction with Claimant's own testimony, the discipline of a ten day overhead suspension cannot be considered unduly harsh. Therefore this claim must be denied.

AWARD NO.10
NMB CASE NO.10
UNION CASE NO.B09143506
COMPANY CASE NO.12(06-0390)

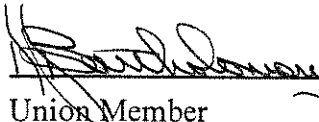
AWARD

Claim denied.



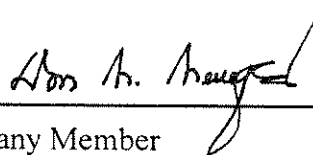
Nancy Faircloth Eischen, Chair

Dated at Spencer, New York on June 20, 2007



Union Member

6-27-07



Company Member

7/2/07