

AWARD NO. 81
Case No. 81

Organization File No. D70828408
Carrier File No. 2008-019319

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The discipline [removed/withheld from service and subsequent thirty (30) actual days suspension without pay, effective April 24, 2008 and ending June 5, 2008] imposed upon Mr. M. Goodwin for alleged violation of CSX Transportation Operating Rules - General Rule A and General Regulations GR-2(4) and CSX Safe Way General Safety Rules - GS-5 in connection with alleged failure to follow instructions by Engineer of Track J. Castle to immediately notify his immediate supervisor or a company official of his need to seek additional medical attention on March 1, 2008 for an injury that occurred on February 28, 2008 was arbitrary, capricious, unwarranted and in violation of the Agreement.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Goodwin shall now have this discipline removed from his record and he shall be compensated for all lost time, as well as have all other rights and benefits restored that may have been lost, as a result of his removal from service and discipline.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On Friday, February 29, 2008, Claimant was working as a Production Trackman on the Florence Division replacing broken rail at Hamlet, South Carolina. While at work, Claimant felt a sharp pain in his shoulder. He reported this to his foreman and completed an accident report before he left work. He declined medical attention at the time. According to Engineer of Track J. F. Castle, Claimant "continued to fill out the paperwork we filled out the company's side of the paperwork, when he got ready to go reminded him if anything happened he needed to let somebody know because there was stuff that we had to do as a company."

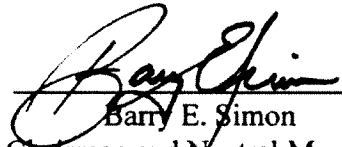
When Claimant's pain was worse the following day, he went to the emergency room and was given pain medication. On Sunday, March 2, 2008, Claimant called his foreman to let him know that he had gone to the emergency room and would not be at work on Monday. The foreman then notified the Assistant Roadmaster, who reported this information to Castle on Monday morning. Castle phoned Claimant and told him to come in to file additional forms related to his going to the hospital. Claimant did as he was told, but remained off of work pending release by his doctor.

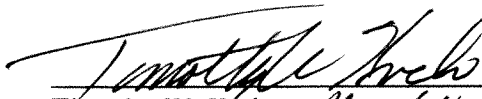
Claimant was subsequently notified that he was removed from service and directed to attend a formal investigation at which he was charged with late reporting of an injury and insubordination. Following the investigation, Claimant was assessed a thirty day suspension, commencing with the day he was released by the Carrier's Medical Department to return to work.

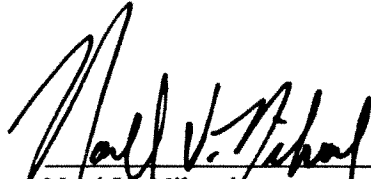
We have reviewed the record of the investigation and conclude that the Carrier has not met its burden of proof. It is undisputed that Claimant promptly reported the injury as required by the Carrier's rules. While there may have been a delay in reporting that he had gone to the hospital, it is evident that he was under medication at that point. As soon as he could, he contacted his foreman

to give that information. That delay does not rise to the level of insubordination. Accordingly, it is the judgment of this Board that the discipline imposed in this case must be rescinded and Claimant is to be made whole for time lost as a result of the suspension.

AWARD: Claim sustained. Carrier is directed to comply with this Award withing 45 days.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member
March 4, 2011


Noel V. Nihoul
Carrier Member
3/4/11

Dated: February 15, 2011
Arlington Heights, Illinois