PUBLIC LAW BOARD NO. 7120

PARTIES TO DISPUTE: (BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION
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(CSX TRANSPORTATION, INC.

STATEMENT OF CHARGE:

By letter dated July 11, 2011, S. Pimentel, Roadmaster MW Florence Division, notified B. C. Williams to attend a formal Investigation on July 22, 2011, at the CSX Engineering Building conference room in Charlotte, North Carolina, "to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1430 hours, on June 26, 2011, on the Charlotte Subdivision, in the vicinity of Indian Trail, NC. It is alleged," the letter continued, "that you failed to report an on duty injury at the time it occurred and you also failed to notify your supervisor before seeking medical attention." In connection with the incident, the letter proceeded, the Claimant was "charged with failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A; as well as, CSX Safeway Rule GS-5 (A, B and D)." At the request of the Organization the hearing was rescheduled to August 5, 2011. By oral agreement the parties then changed the hearing date to August 4, 2011.

FINDINGS:

Public Law Board No. 7120, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are

respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant, B. C. Williams, at the times here relevant, was employed by the Carrier as a Basic Trackman. His date of hire was July 9, 2007. His immediate supervisor was Roadmaster S. Pimentel.

On Sunday, June 26, 2011, Roadmaster Pimentel called Claimant Williams out to work that day. He originally assigned him to run some joint bars to Monroe, North Carolina. Later, around 11:00 o'clock, Roadmaster Pimentel called Mr. Williams again and told him to investigate a reported fire in the vicinity of Indian Trail Road near milepost SF 315. Around 3:00 p.m. Mr. Williams called Roadmaster Pimentel to report that he was involved in a vehicle accident.

Roadmaster Pimentel was in the middle of jamboree operations at the time – "jamboree" being the term used by the Carrier for heavy rail maintenance operations – and could not go to the scene of the accident immediately. He spoke to Mr. Williams on the phone, however, who told him that he was fine and that the accident was not his fault. Mr. Williams was driving a CSX track inspection truck over a road crossing headed north on Indian Trail Road in the town of Indian Trail, North Carolina. A Ford Taurus drove in front of him at the intersection to make a left turn, and Mr. William's vehicle struck the other vehicle in the rear passenger door on the right side.

Later in the afternoon Mr. Williams came back to the office, and Roadmaster Pimentel spoke with him and asked him if he was all right. He said, yes, that he was okay. Mr. Williams reported for work on June 27, 2011. On June 27th, Roadmaster

Pimentel, according to his testimony, received a call from the Division Office and was told to investigate the findings of an ARI report. ARI is a contractor that manages CSX's vehicle fleet and does the initial accident report if a fleet vehicle is involved in an accident. The report of accident prepared by ARI, in the section headed "Injuries," listed the Claimant's name and address and, for "Type" of injury, stated "Neck Soreness."

Roadmaster Pimentel testified that he called Mr. Williams in and asked him if he said anything about a sore neck to anybody. He said that he had. The Roadmaster and Mr. Williams then went to the vehicle and filled out PI-1 and PI-1A forms. Roadmaster Pimentel testified, "I asked him if he was ok[;] if he needed to go to a doctor that he was to call me and I'd take him to my doctor." Mr. Williams did not request any medical treatment on June 27th.

Mr. Williams, according to the Roadmaster's testimony, reported for work on Tuesday, June 28, 2011. The Roadmaster testified that the first thing in the morning he asked him about his injury, and Mr. Williams gave him "a thumbs up." Mr. Williams, according to Roadmaster Pimentel, said that he thought that everything would be okay. On Wednesday, June 29, 2011, the Roadmaster testified, Mr. Williams called off. He said that he had been up all night with his new baby and, also, tending to his wife. He said that he probably would be back in the following day.

On Thursday morning, June 30, 2011, according to the Roadmaster, Mr. Williams reported for work and informed Roadmaster Pimentel that he had gone to a doctor the evening of June 29th because he had a headache. He said that the doctor had prescribed a mild muscle relaxant for his neck. Mr. Williams's failure to call him on Wednesday evening when he went to the doctor, Roadmaster Pimentel testified, was, he thinks, a violation of General Rule A. By not reporting the on-duty injury and not notifying his

supervisor of the medical attention he received, Roadmaster Pimentel stated, Mr. Williams violated CSX General Safety Rules GS-5 A, B, and D.

Claimant Williams testified that he reported the accident to ARI as instructed by the Roadmaster and was asked a number of questions by the ARI representative relating to the accident. One of the questions he was asked, Mr. Williams stated, was whether there were any injuries. He testified, "I told them there were no injuries I said but I just have a stiff neck and that's it. I said I'm not hurt; I'm not in any pain or anything like that, just a little stiff." The ARI representative, according to Mr. Williams, said that he did not have anything on his form for a stiff neck and would have to put in "neck soreness" or something like that.

After finishing with the police and ARI, Mr. Williams stated, he drove back to Charlotte, and the Roadmaster was in the office. The Roadmaster, Mr. Williams testified, asked him if he was hurt or injured. He told him, Mr. Williams stated, no, that he was okay. On Monday, June 27th, Mr. Williams testified, he reported to the Roadmaster that he had soreness in the neck but that there was no need for medical attention. Asked by the conducting officer whether the Roadmaster approached him on June 27th concerning the incident the previous day, Mr. Williams stated, no, that the Roadmaster asked if everybody was okay and that at the job briefing he went to speak to Roadmaster Pimentel to let him know about his (Mr. Williams's) neck.

On Tuesday, June 28th, Mr. Williams testified, he called the Roadmaster in the morning and told him that he would not be able to come in because his baby had been up all night, he had been taking care of his wife, and for these reasons he felt that he was physically unable to come into work. Later that day, Mr. Williams stated, he had a strong migraine headache, and for that reason went to the doctor. (Tr. 26). Wednesday

morning, June 29th, according to Mr. Williams, the first thing he did was report to the Roadmaster that he had been prescribed some medication for his neck.

The place where he went for medical care, Mr. Williams stated, was the urgent care facility. It was sometime in the evening. For the headache, Mr. Williams testified, the doctor said to continue taking 600 milligrams of Ibuprofen. In examining him, Mr. Williams stated, the doctor asked him if there was any change in his physical activity or if he was in an accident. Mr. Williams said that he was in a vehicle accident. The doctor asked him if he had soreness anywhere. He let the doctor know, Mr. Williams testified, "that my neck had been sore." According to Mr. Williams, the doctor told him to get an x-ray and then said that he should continue to take 600 milligrams of Ibuprofen and prescribed a muscle relaxant for his neck. His migraine was pounding pretty bad, Mr. Williams stated, and "that's when . . . I went home and took some medicine and went to bed." On the day that he went to see the doctor, Mr. Williams did not contact the Roadmaster beforehand to report that he was going to the urgent care facility or afterwards to say that he had been there.

Mr. Williams testified that the following morning after seeing the doctor he went straight to the office to let Roadmaster Pimentel know that he had been prescribed some medication for his neck. Mr. Williams acknowledged that he was familiar with the rules he was charged with violating. He testified that "the only thing" that he would have to say in his defense was that "it says to seek medical attention as a result of an on duty injury. At the time," he continued, "I wasn't going . . . for my neck . . . . I was going for a headache and . . . from the injury I had not felt any headache pain." It was only after the doctor asked him about it, he explained, that he told him about his neck.

In a closing statement in behalf of the Claimant the Organization argues that the

Claimant did report the injury on June 26, 2011, as shown by the ARI report of the accident. This was compliance with General Rule A, the Organization asserts. So far as General Safety Rules GS-5 is concerned, the Organization argues, the Claimant went to the doctor because of a headache unrelated to his neck injury, and the doctor prescribed medication to relieve the headache. The "bottom line," the Organization contends, is that there was no basis for the Claimant to be charged. Nor, the Organization argues, was discipline administered in this case in accordance with the IDPAP. The Carrier, the Organization urges, has not met its burden of proof, and no discipline in the form of lost wages or an unfavorable mark should be placed on the Claimant's record.

In its closing the Organization also noted that at the beginning of the hearing it requested that the Claimant be exonerated of the charges against him on procedural grounds in that the Carrier failed to comply with the Organization's request to be provided prior to the hearing with copies of the exhibits and other pertinent documents that the Carrier intended to introduce into evidence at the hearing. It was the Organization's position that as part of proper representation the employee's representative must know and understand the charges being brought against the principal by the Carrier and that this could not be accomplished without being provided the documents beforehand for review and analysis.

Following the close of the hearing, by letter dated August 23, 2011, the Division Engineer notified Claimant Williams of the Carrier's determination that all objections were properly addressed by the conducting officer during the course of the hearing and that the hearing was held in accordance with his due process rights. "Based on the evidence presented at the investigation," the letter concluded, "it is my decision that the discipline to be assessed is five (5) days actual suspension, beginning August 29, 2011 up

to and including September 2, 2011."

In its post-hearing submission filed in the case the Carrier asserts that the Claimant was afforded a fair and impartial investigation in accordance with the controlling Agreement. Regarding the Organization's contention that the Claimant should be exonerated because the Carrier did not provide the Organization prior to the hearing with copies of the exhibits that the Carrier intended to introduce into evidence at the hearing, the Carrier asserts that, without precedent or prejudice and as a courtesy only, it provided the Organization prior to the hearing with the documents requested. In addition, the Carrier argues that the Organization's argument is baseless and has been rejected by this Board on numerous occasions.

On the substantive issue the Carrier argues that it has met its burden of producing substantial evidence of the Claimant's guilt. The Claimant, the Carrier asserts, violated General Safety Rules GS-5 A and D by failing to report his injury to his supervisor. Instead, the Carrier notes, in his telephone conversation with Roadmaster Pimentel shortly after the accident the Claimant stated that he was not injured. The Carrier notes that after telling his supervisor that he was not injured, the Claimant told the ARI agent that he had a stiff neck, and then, on the same day, met with his supervisor about the accident and said that he was okay. The Claimant's failure to report the accident to his supervisor on the day of the occurrence, the Carrier argues, violated GS-5 A and D.

The Claimant's action in seeking medical treatment without immediately notifying his supervisor, the Carrier asserts, violated GS-5 B. The Carrier notes that in addition to the General Safety rule on the subject, Roadmaster Pimentel had specifically instructed the Claimant that if he needed to go to a doctor, to call him, and he would "take him to my doctor," presumably a doctor selected by the Carrier. It was a violation of GS-5 B,

the Carrier contends, for the Claimant not to notify his supervisor of his decision to seek medical attention before going to the hospital and not to notify his supervisor after leaving the hospital.

Regarding the Claimant's argument that he did not go to the doctor for the purpose of treatment of his neck condition but for a migraine headache unrelated to the accident, the Carrier asserts that the Claimant has presented no evidence of a history of migraine headaches on his part. Absence such evidence, the Carrier argues, it is reasonable to assume that the headache was related to the Claimant's recent accident. The Carrier also notes the Claimant's explanation that he was tired and wanted to go home. Once the Claimant made a conscious decision to advise the doctor of his neck issue and the cause, the Carrier responds, "he was obligated to notify management, and should have immediately reported the treatment." There is no excuse for the Claimant's noncompliance with Rule GS-5 B, the Carrier contends, or his disregard of his supervisor's instructions. The Carrier further argues that the degree of discipline assessed was consistent with the IDPAP.

Regarding the Organization's due process argument, the Board has held in previous cases that there is no contractual requirement for the Carrier to provide the Organization prior to the hearing with copies of documents that the Carrier will rely on in support of its case at the hearing. See, for example, Award No. 97, Public Law Board No. 7120, where the Board held that the failure to provide the Organization requested evidentiary documents prior to hearing was not a basis for finding that the Claimant was deprived of a fair hearing or for dismissing the charges against him, citing a number of prior Board cases that have so held. The Board makes the same ruling in the present case. The Board further notes that the Organization has not stated which documents it is

referring to and how specifically it was prejudiced by not being given copies of those documents prior to the hearing.

What stands out in this case is the failure of the Claimant to take seriously the Carrier's rules relating to the reporting of on-duty injuries. For reasons of the safety and health of its employees, OSHA requirements, and self-protection against fraudulent claims the Carrier has established strict rules regarding the reporting of on-duty injuries and seeking medical care for such injuries. It has also placed the "Late reporting of injury" in the category of Major Offenses in its Individual Development & Personal Accountability Policy ("IDPAP"). Yet the Claimant knowingly incurred a neck injury in an automobile accident while on duty operating a Carrier vehicle, reported his neck condition to the ARI agent, but in a conversation with his immediate supervisor shortly before speaking with the ARI agent, and when he arrived back to the Carrier office after the accident and discussed the incident with the same supervisor, said that he was okay and failed to mention his sore neck. He simply ignored a plainly applicable rule, although he was aware of his injury, having reported it to the ARI agent.

There are situations where an employee claims not to have experienced any symptoms of an injury until sometime after a relatively minor vehicle collision. Such cases are often the subject of an official Investigation as to whether the employee violated Rule GS-5A if the employee subsequently seeks medical attention for a claimed on-duty injury or files a claim for compensation. Here, however, the employee informed the ARI agent, who is not a Carrier supervisor, of his neck injury immediately after the incident but said nothing to his supervisor of the injury in two separate conversations regarding the accident. It is difficult to argue that this is not a violation of Rule GS-5 A in this Board's opinion.

Roadmaster Pimentel testified that Monday morning, June 27th, the Claimant said nothing about a neck injury, and that he (Mr. Pimentel) learned of it only after he was told by the Division Office to investigate the reference to neck soreness in the ARI report about the accident that the Claimant was in the preceding day. The Claimant testified that in the job briefing on June 27th he went on his own to speak to Roadmaster Pimentel about his neck. The Claimant did not explain why he decided to tell the Roadmaster about his neck on Monday morning when he said nothing about his injury in two conversations with the Roadmaster the day before.

The testimonies between the Roadmaster and the Claimant differ as to what day the Claimant went to the urgent care clinic. The Roadmaster testified that the Claimant worked on Tuesday, June 28th, and that the first thing that morning, when the Roadmaster asked him about his neck, he gave the Roadmaster a "thumbs up." However, according to the Roadmaster, the Claimant was absent from work on Wednesday, June 29th. (Tr. 10-11). The Claimant testified that he did not go to work on Tuesday, June 28th, but went to work on Wednesday, June 29th. (Tr. 26-27).

Whether it was June 28th or June 29th, however, the testimonies of both the Roadmaster and the Claimant are in agreement that on the day that the Claimant was absent, he went to the urgent care clinic. The Claimant testified that he went to the clinic because he had a migraine headache unrelated to his accident and that he mentioned his neck injury to the doctor only after the doctor questioned him about whether there was any change in his physical activity or if he had been in an accident.

The Claimant did not produce any medical record of his visit to the clinic. The Claimant would have been in the best position to obtain such record. It would most likely state the patient's complaints, the history taken, the diagnosis, and the treatment. The

failure of the Claimant to produce the medical record of his visit justifiably raises the question of whether it would support his account of the reason for his visit to the clinic and what he told the nurse or doctor who took a medical history of the patient's complaints.

Even, however, if the Claimant's testimony is fully credited, his actions violated Rule GS-5 B. The Claimant stated that he went to the clinic solely because of a migraine headache unrelated to his neck injury. When the doctor told him that he was ordering an x-ray of the Claimant's neck, the doctor was invading an area for which, according to his testimony, the Claimant was not seeking medical care or treatment. The Claimant acknowledged that he was familiar with the rule regarding on-duty injuries (Tr. 28). In addition, he had been specifically told by his supervisor that if he needed to go to a doctor regarding the injury, to call the supervisor, who would take him to a company doctor. All that the Claimant had to do was to tell the doctor that because his neck injury had occurred while at work, he had to notify his supervisor before he could consent to the x-ray or any treatment of his neck condition.

There would have been nothing awkward about doing this since the Claimant, according to his testimony, had come for treatment of a headache and not a sore neck. It is not likely that the doctor would have objected to such a request on the Claimant's part since it is common knowledge that many employers wish to be involved in medical care related to work-related injuries. Nor would the delay involved in a telephone call to the Claimant's supervisor have in any way endangered the health or well-being of the Claimant.

Nor is the Claimant's failure to give prior notification to his supervisor before consenting to an x-ray of his neck excusable on the basis that the Claimant was in too

much pain because of his headache to call his supervisor. First, he did not testify that he was in too much pain to call. Second, if he was physically able to drive himself to and from the clinic, then he must also have been physically able to call his supervisor. If someone else drove him to and from the clinic, then he could have asked that person to call the supervisor for him.

What the Board finds troubling in this case is the Claimant's utter failure to comply with the Carrier rules in an area that is of the highest importance to the Carrier, on-duty injuries. The Claimant failed to report the injury to his supervisor in violation of a specific rule requiring such notification and despite the fact that the supervisor expressly asked him about his physical condition as a result of the accident. The Claimant then submitted to an examination and treatment of his neck condition without first notifying his supervisor of his decision to do so. He did so despite an express rule requiring employees to "immediately notify their supervisor of the decision to seek medical attention" and despite specific instructions from his supervisor to call the supervisor before going for medical treatment.

Not only did the Claimant not provide prior notice to his supervisor, but he did not even give notice on the day of obtaining treatment. He waited until the next day to do so. The Claimant ignored a clear rule and clear instructions from his supervisor regarding notifying his supervisor of his decision to seek medical attention. This was his second violation of Rule GS-5 regarding the injury, the first violation being a failure to report the injury to a supervisor at the time of the occurrence.

The Board is not suggesting that the Claimant was acting fraudulently or being knowingly insubordinate. But he was lackadaisical regarding his job responsibilities, which is not acceptable at any time, but especially in matters relating to on-duty injuries

or other critical areas.

The Board finds that the Carrier has established by substantial evidence that the Claimant violated General Safety Rules GS-5 as charged. His disciplinary record shows a prior serious violation in January, 2011, for which the Claimant apparently signed a waiver. Even if the Claimant's violation in the present case were considered to be only a Serious Offense rather than a Major Offense (which is the proper classification of a late reporting of an on-duty injury) the normal progression under the IDPAP for a second serious offense within a three-year period is "Up to 30 days suspension." The Board finds that the discipline administered in the present case was appropriate under the terms of the IDPAP.

Finally, it should be noted that the Board is not ruling on the question of whether an employee is obligated to see a Carrier physician rather than a physician of his own choice as the result of an on-duty injury. That question is not an issue in this case. This case deals only with the issue of notification, not treatment.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

Sinclair Kossoff, Referee & Neutral Member

Chicago, Illinois
December 8, 2011