

BEFORE PUBLIC LAW BOARD NO. 5896

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 189

STATEMENT OF CLAIM:

Appeal of the dismissal assessed Claimant J. Daniel on January 28, 2003, for failure to promptly report an alleged injury.

FINDINGS:

Claimant J. Daniel was employed by the Carrier in a Blue Hat position during the relevant time period.

By letter dated November 21, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with an alleged on-duty injury that the Claimant claimed occurred on September 10, 2001, but reported to Roadmaster G. W. Howell on November 12, 2002. The Carrier charged the Claimant with failure to promptly report an alleged accident/incident in violation of Carrier Safeway Rule 1(i).

After one postponement, the hearing took place on January 9, 2003. On January 28, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal effective that date. The Carrier further informed the Claimant that his alleged September 10, 2001, on-duty personal injury is simply an alleged incident, that the dates the Claimant provided substantiating his claim

are inaccurate, that he did not provide proof of an incident causing an injury, and that all of the witnesses stated that he merely had a sore elbow.

The Organization thereafter filed a claim on the Claimant's behalf, challenging his dismissal and requesting that the matter be submitted to Public Law Board No. 6239 for expedited handling. The Carrier denied the claim.

The Carrier argues that its Notice of Discipline was issued in compliance with Rule 25 in that it was dated January 28, 2003, nineteen days after the close of the hearing. Therefore, the Carrier maintains that notice was timely given within the twenty-day period as required by Rule 25. The Carrier further points out that the Claimant was afforded a fair and impartial hearing. The Carrier maintains that the Claimant failed to validate his assertion that an on-duty injury occurred on September 10, 2001, and that he actually reported his injury in a timely manner. Moreover, the Carrier argues that no witness involved in the investigation could remember or confirm the Claimant's story concerning his alleged injury and that he reported it in a prompt fashion. The Carrier also points out that this case is not the Claimant's first wrongdoing involving a personal injury and that the Claimant, in this case, attempted to use the late reporting of his alleged on-duty injury to secure the payment or reimbursement of medical expenses. In addition, the Carrier points out that the Organization's request to docket this case before Public Law Board No. 6239 for expedited handling is procedurally defective and belatedly presented and that the Organization waived its right to submit the discipline decision directly to the Board when it elected to handle the dispute through normal procedures.

The Organization argues that the Carrier rendered its decision in an untimely manner in that the Carrier failed to issue its Notice of Discipline within the twenty-day time limit following the close of the hearing as required in Rule 25. In addition, the Organization points out that the Claimant initially complained of pain in his arm, shoulder, and leg to Roadmaster Howell but that Mr. Howell's response was that the Claimant was experiencing arthritis pain. The Organization maintains that as a result of Mr. Howell's response, the Claimant did not believe that the pain was anything worse than arthritis or soreness at first, but the pain worsened in time and the Claimant submitted a claim. The Organization requests that the Notice of Investigation, the discipline, and all related matters be removed from the Claimant's personnel file and that he be returned to service and made whole for all losses.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit. This Board has reviewed the record, and we find that the Claimant was properly notified of the hearing and he was timely notified of the discipline and there is no procedural basis to set this case aside.

With respect to the merits, this Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to promptly report an alleged accident/incident in violation of Carrier Safeway Rule 1(i). That rule requires that :

Oral and written reports of accidents and injuries are made as soon as possible to the supervisor or employee in charge.

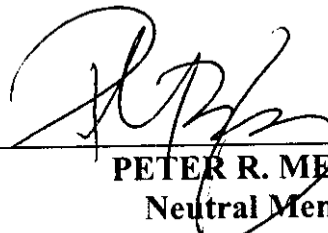
The Claimant in this case waited a very long time before he reported the alleged accident that he contended was the basis for his injury.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

This Board recognizes that the Claimant in this case was employed for over twenty-six years with the Carrier. However, even taking that lengthy seniority into consideration, the wrongdoing committed by the Claimant in this case was so egregious that even when this Board applies that lengthy seniority to this record, we cannot find that the Carrier's action in terminating the Claimant for this act of dishonesty was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

Dated: 8/27/03