

BEFORE PUBLIC LAW BOARD NO. 5896

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION**

Case No. 199

STATEMENT OF CLAIM:

Appeal of the dismissal of T. Rutherford

FINDINGS:

On August 21, 2003, the Carrier conducted a formal investigation and hearing to develop the facts and information regarding charges that the Claimant allegedly falsified a personal injury and also falsely reported an incident, in violation of Carrier's Operating Rules. The Claimant allegedly had reported an on-duty injury that he claimed had occurred on February 4, 2003, when the alleged incident that caused the injury actually had occurred sometime during the summer of 2002. As a result of this investigation, the Carrier found the Claimant guilty as charged and dismissed the Claimant from the Carrier's service. The Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The Carrier contends that the evidence developed at the hearing supports a finding that the Claimant is guilty as charged. The Carrier asserts that based upon the Claimant's deliberate attempt to falsify a personal injury report, dismissal was the appropriate disciplinary penalty under the circumstances. The Carrier contends that the instant claim should be denied in its entirety.

The Organization contends dismissal was not appropriate under the circumstances.

The Organization maintains that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

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 had deliberately attempted to falsify a personal injury report in violation of CSXT Operating Rules 501(4) and (7). The Claimant stated that he had injured his lower back while driving a crane from a Carrier position during the summer of 2002. He subsequently stated that it started hurting him again on February 4, 2003. However, there was no report of the injury from the crane in the summer of 2002. The Claimant admitted that he did not make out paperwork relative to the alleged injury in September of 2002. His excuse was that "at the time, I did not have the paper." The Claimant admitted that he did not tell a supervisor that he had sustained an injury in September of 2002. The Claimant admitted that he knew that it was a violation of the Operating Rules to sustain an injury and not report it. The Claimant's only excuse was that he "reported it but I just reported it the wrong way." The Carrier's rules clearly prohibit making false statements and dishonesty.

The Claimant admitted in his testimony that he had failed to report the original injury which had actually occurred five months before the reported injury in February of 2003. Hence, we find that the Carrier properly found the Claimant guilty of acting in violation of the Carrier's rules.

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.

It is fundamental that failing to promptly report an injury on the job is a dismissible offense. This Board has previously upheld a discharge for a twenty-six year employee for failing to promptly report an injury on the job. (See Public Law Board No. 5896, Case No. 189.) Despite the lengthy seniority of this Claimant, we must hold that given the seriousness of the violation of the rules in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

DATED: 12/20/04