

Case No. 3 Award No. 3

STATEMENT OF CLAIM:

Later in the afternoon of November 19, the Claimant and Deming went to a local hospital emergency room for the Claimant to be examined by medical officials. Simply stated, the examining doctor found no significant medical problem, noting however the possibility of pulled muscles. The Claimant was released for full duty.

When Deming and the Claimant exited the hospital, Deming told the Claimant that he was removed from service pending a formal investigation. Deming testified that the reason he removed the Claimant from service was because the Claimant waited until November 19 to report the shoulder injury.

The Claimant was then directed to appear at an investigation "to develop the facts and determine your responsibility, if any, in connection with your allegedly sustaining a personal injury to your left shoulder at about 6:00 a.m. Friday October 3, 1997 at Madisonville, Kentucky and your alleged failure to properly report this alleged injury." Subsequently, the Carrier found the Claimant guilty as charged and he was assessed the discipline of a sixty (60) day suspension from November 19, 1997 until January 18, 1998.

The Organization contends, as a threshold position, that the Claimant did not receive a fair and impartial investigation. The Board finds that, while the Hearing Officer may have been somewhat restrictive during the proceeding, the essential facts were by one means or other developed. We do not find that the way the investigation was conducted was prejudicial to the Claimant.

With respect to the merits, the Board concludes that there is no proper basis for finding the Claimant guilty.

Two Rules are applicable to the case. Rule 31 of the Agreement in pertinent part reads:

Section A. General Requirements

1. An employee shall not be discharged, suspended or otherwise disciplined without just cause and without a fair and impartial hearing, except that an employee may waive a hearing in accordance with Section B(2) of this Rule.

2. An employee shall not be withheld from service pending hearing except in cases Management determines to be serious, such as, but not limited to theft, altercation, Rule "G" violation, insubordination, major accidents, serious misconduct and major offenses whereby the employee's retention in service could be hazardous.

Paragraph 3 of P&L Operating Rule 840 reads as follows:

Employees must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while the employee was on duty or on company property. Upon receipt of the report, the employee in charge of the supervisor, in turn, must make prompt report of the injury to the appropriate officer. The injured employee must furnish the written injury report on the prescribed form, or if the injured employee is unable to do so, the required report must be furnished by the supervisor or employee in charge.

We now will address Deming's action to relieve the Claimant from duty on November 19. The Board notes that, historically, Carriers have had considerable leeway to exercise managerial discretion to withhold employees from service, when applying the provisions of Rules like Rule 31. However, the Claimant's actions here did not rise to the level normally contemplated by the discipline Rule. Deming's reason for relieving the Claimant, namely that he did not report his allegedly shoulder injury on October 3, was not reasonable.

With respect to the charge itself, the Board recognizes that the Carrier must strictly enforce Operating Rule 840 not only to protect itself from liability, but also to protect its employees and, in many instances, the general public.

However, the Carrier also has a responsibility to apply its Rules in a reasonable fashion. In this instance, the evidence clearly shows that the locomotive door which the Claimant opened on October 31, leading to his alleged knee injury was hard to open and, as the evidence shows, may have contributed to the knee injury. However, that element is not before the Board, what is at issue is the Claimant's failure to report the alleged shoulder injury on October 21.

Certainly, there are some injuries that may not become noticeable until later. The Claimant, according to the testimony adduced at the investigation, was not incapacitated for work. Deming's more reasonable course of action would have been to let the Claimant provide a written report of the alleged injury, rather than relieve him from duty.

AWD NO. 3

PLB No. 6113 C-3/A-3

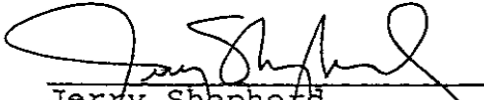
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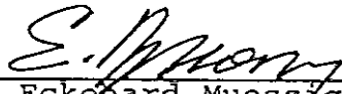
Following a review of the written report, if the Carrier had reasonable cause to suspect impropriety on the part of the Claimant, these matters could have been subject to an investigation at that time.

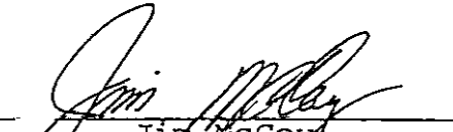
AWARD

The claim is sustained.

I dissent!


Jerry Shepherd
Carrier Member


Eckenard Muessig
Neutral Member


Jim McCoy
Employee Member

Dated: 1-14-99