

BEFORE PUBLIC LAW BOARD NO. 6152

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CHICAGO, CENTRAL AND PACIFIC RAILROAD

Case No. 3

STATEMENT OF CLAIM:

1. The dismissal of Mr. G. G. Foland for alleged violation of Safety Rule 561 and Safety Rule General Rule # because of failure to promptly and properly report an injury that occurred on August 7, 1997 was arbitrary, capricious and on the basis of unproven charges.
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed the remedy prescribed by the parties in Rule 35(g).

FINDINGS

On August 7, 1997, the Claimant assisted Mechanic Ott in reattaching a starter and solenoid on a Mark III Tamper. After the job was complete, the Claimant continued to perform routine maintenance to the machine. At the end of his tour of duty, the Claimant felt that his muscles were fatigued. Claimant proceeded to drive home and along the way he felt too sleepy to continue driving. At approximately 9:00 p.m., he pulled into a rest area and slept in his car. He awoke at 5:00 a.m., August 8, 1997, and noticed that his shoulder was sore. He proceeded home and upon his arrival, he went to bed and slept until 2:00 p.m. When he awoke, his shoulder was still sore and it had begun to cramp. He telephoned Roadmaster Digvonni and reported his injury for the first time.

On August 18, 1997, the Carrier notified the Claimant to attend an investigation to

determine his responsibility, if any, in the failure to report his personal injury in a timely fashion and his failure to perform his work in safe manner. The investigation was held on September 16, 1997, and it was determined that the Claimant was guilty of violating Safety Rule 561 and General Safety Rule E.

The Organization appealed the discipline on behalf of the Claimant contending that the Claimant did not realize that he had sustained a personal injury on August 7, 1997, until the next day. The Carrier denied the Organization's appeal.

The parties being unable to resolve the issue, 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 failed to properly report his injury on the job that occurred on August 7, 1997. The record reveals that the Claimant had crawled beneath an engine and done some work and felt his muscles become sore. However, when he woke up the next morning, he determined that his shoulder was very sore and he finally belatedly reported his personal injury at 4:30 p.m. on August 8, 1997.

The Carrier's Rules require that employees report injuries on the job prior to the end of the employee's tour of duty and before leaving the Carrier property. It is clear that the Claimant did not do this because he admittedly did not report his injury on August 7, 1997.

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 be unreasonable, arbitrary, or capricious.

In the case at hand, it is clear that although the Claimant violated the Rule, his violation was not that egregious or with any intent to defraud the Carrier. The injury did not become totally apparent to him until the next day and at that time, he did report it. Because there was a technical violation of the Rules, the Claimant was deserving of some discipline. However, this Board finds that termination of the Claimant was unreasonable.

The record reveals that the Claimant has been returned to work and has begun working as a clerk. There is no evidence in the record that the Claimant had been able to work any other type of a job in the nearly eleven months prior to his return to work in July of 1998. Consequently, given the fact that the Claimant was guilty of the violation and deserving of a suspension, this Board finds that the Claimant shall be reinstated to his employment and he shall be allowed to resume his work as a clerk, but he shall not be awarded any backpay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:

Claim sustained in part. The Claimant is reinstated to his employment with the Carrier and shall be able to continue to work as a clerk. His seniority is terminated and he shall receive no backpay.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

Dated: 7/12/99



ORGANIZATION MEMBER

Dated: 7-12-99