

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 8

STATEMENT OF CLAIM:

Appeal of thirty-day suspension of Claimant Michael R. Lisk as a result of investigation held June 28, 2000, in connection with Claimant's alleged failure to timely report an injury and falsification of his injury report.

FINDINGS:

Claimant Michael R. Lisk was employed by the Carrier as a an equipment operator at the time of this claim.

On June 13, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts in connection with his verbal and written report on May 29 and 31, 2000, of a personal injury which allegedly occurred while he was on duty on May 25, 200, at approximately 1400 hours, near milepost BUS 7.0. The Carrier charged the Claimant with failing to timely report his injury and falsifying the report in connection with his injury.

After one postponement, the hearing took place on June 28, 2000. On July 28, 2000, the Carrier notified the Claimant that he had been found guilty of failing to timely report his injury to the Carrier and was being assessed discipline of thirty days actual suspension from all service effective upon his qualifying to return to service.

The Organization filed a claim challenging the Claimant's suspension.

The parties being unable to resolve the issues, 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 was guilty of failing to timely report an injury. The record is clear that the Claimant incurred some type of injury while working on May 25, 2000, and did not report it until May 29, 2000. The Claimant stated that he thought that the injury was a "minor thing" and it "would be a day or two and I'd be okay." Hence, he knew he was injured and did not file a report until four days later. That action on his part violated the rules.

With respect to the charge of falsification of the injury report, this Board finds that the Carrier has failed to meet its burden of proof on that charge. The record is clear that the Claimant was treated for acute muscle strains by a physical therapist in late May of 2000. When he was at her office on May 31, 2000, he indicated that he was injured at work. It is also clear that he did lift a rail with Mr. Church. Consequently, there is simply insufficient evidence that the injury report was falsified.

Since the Claimant was issued a thirty-day suspension for the two rule violations and the Carrier has only been able to prove one, this Board hereby reduces the thirty-day suspension to a fifteen-day suspension and orders that the Claimant be made whole for the additional fifteen days.

AWARD:

The claim is sustained in part. The Claimant's thirty-day suspension is hereby reduced to a fifteen-day suspension and the Claimant shall be made whole for the additional fifteen days he was off work.



PETER R. MEYERS
Neutral Member