

BEFORE PUBLIC LAW BOARD NO. 6239

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION

Case No. 30

STATEMENT OF CLAIM:

Appeal of the twenty-day actual suspension assessed Claimant R. J. Baker on January 27, 2003, for conduct unbecoming an employee, falsification of an injury and late reporting of an alleged incident, and failure to protect his assignment.

FINDINGS:

Claimant R. J. Baker was employed by the Carrier as a Foreman during the relevant time period.

On December 4, 2002, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in connection with an incident that allegedly occurred at MP 374.4 on September 15, 2002, which the Claimant reported on September 23, 2002, as an alleged on-duty injury, and for being absent from his assignment as Foreman on Force 5Q18 without proper authority commencing September 23, 2002. The Carrier charged the Claimant with conduct unbecoming an employee, falsification of an injury, failure to timely report the alleged incident, and failure to protect his assignment. The Carrier also charged the Claimant with possible violations of Carrier Safeway General Safety Rule No. 1(i) and NORAC Operating Rules B, D, N, R, S, and U.

After one postponement, the hearing took place on January 7, 2003. On January

27, 2003, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of a twenty-day actual suspension, effective fifteen days from the Claimant's receipt of the Notice of Discipline.

The Carrier maintains that the rules require that an employee must immediately notify the Carrier's medical office of any condition that could impair his or her ability to perform his or her duties and that that requirement applied to the Claimant on September 15, 2002. The Carrier argues that the Claimant knew that something had occurred to his back on September 15, 2002, yet did not report that injury until September 23, 2002, even though he sought medical attention on September 19, 2002. Therefore, the Carrier argues the fact that the Claimant waited eight days to report an injury is a clear violation of the Carrier's requirement to promptly report an injury, which in turn subjected the Claimant to discipline. The Carrier also maintains that the Claimant did not produce any documentation that he had sustained an injury on September 15, 2002, when he met with his supervisor on September 23, 2002. The Carrier argues that a doctor's excuse dated October 1, 2002, was produced excusing the Claimant from work as of September 23, 2002; however, the Carrier did not give the Claimant permission to be off work. The Carrier requests that the claim be denied.

The Organization argues that the Carrier did not conduct a fair and impartial hearing on behalf of the Claimant. In addition, the Organization maintains that the Claimant did not immediately report his on-duty injury on September 15, 2002, because he did not believe that an injury had occurred at that time. The Organization argues that,

based on the rules agreed to by the Carrier and Organization, the Claimant has the right and responsibility to make decisions based on his own experience, personal judgment, and training. The Organization argues that the Claimant conformed to the Carrier's rules when he decided his injury did not merit reporting on September 15, 2002, and continued working. However, the Organization maintains that on September 23, 2002, the day that his supervisor came back from vacation, the Claimant reported his injury because he became aware that an injury had indeed occurred on September 15, 2002, and he was no longer able to perform his duties. The Organization argues that the Claimant reported his injury in accordance with the rules. The Organization requests that the claim be sustained.

The parties being unable to resolve their dispute, 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.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case, and we find that the Claimant is guilty of failing to promptly report the injury that he allegedly incurred on September 15, 2002. The record reveals that the Claimant reported it eight days later on September 23, 2002. The record makes it clear that the Claimant spoke with several supervisors during that eight-day period and he did not report to any of them that he had sustained an on-duty personal injury. In addition, the record reveals that a supervisor did not give the Claimant permission to

leave and the Claimant subsequently did leave the area. The Claimant admitted that he did not report the injury to his supervisor on the date that it happened.

However, the record does not contain sufficient evidence that the Claimant was guilty of conduct unbecoming an employee or falsification of injury. There is also an insufficient showing in the record that the Claimant was guilty of a number of the safety and operating rules with which he was charged.

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.

The Claimant in this case has been employed by the Carrier for twenty-eight years. In that time, he has maintained a fairly clean record with no showing of any previous suspensions. Given the fact that the Claimant was found guilty of a variety of charges and the record only contains evidence of the late reporting of an injury and not following instructions from his supervisor, this Board cannot find that the twenty-day suspension issued to the Claimant was reasonable discipline. Consequently, we hereby reduce the suspension to a five-day suspension and we order that the Claimant be made whole for the additional fifteen days.

AWARD:

The claim is sustained in part and denied in part. The twenty-day suspension of the Claimant shall be reduced to a five-day suspension for failing to promptly record an

accident and for failing to abide by the instructions of his supervisors. The Claimant shall be made whole for the fifteen days.



PETER R. MEYERS
Neutral Member

Dated: 8/31/03