

Findings from the transcript . . . determined you to be in violation of General Code of Operating Rule 1.2.5; *Reporting*, General Code of Operating Rule 1.1.3; *Accidents, Injuries and Defects*, and Engineering Safety Rules, Core Rule 1; *Rights and Responsibilities*.

In consideration of the decision stated above, you are hereby assessed with a 10 day actual suspension. As you are currently off work, the dates for your actual suspension will be determined at a later date upon your return."

On May 12, 2015 the Carrier notified Claimant and, given Claimant's return to duty, the 10-day unpaid suspension commenced on May 18, 2015 and would conclude on May 29, 2015.

Also on May 12, 2015 the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board "utilizing the abbreviated procedure provided for in Paragraph (K) of said PLB Agreement."

Findings

Public Law Board No. 7544, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Consistent with the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (A) notice of investigation, (B) transcript of the investigative hearing and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim. Within this evidentiary framework, the Board renders these findings.

On August 20, 2014 Claimant occupied the position of Track Laborer. He had been in that position for approximately eleven (11) months and had three (3) years' service with the Carrier. On August 20, 2014 Claimant "stepped back into a couple of low spots/holes and felt a sharp pull in [his] right knee" and, as he continued working, his "knee began to swell and stiffen up." Claimant's duties, when this injury occurred, involved pulling junk ties with a set of tie tongs across track at Portage Yard. When questioned about this incident by the Assistant Roadmaster, Claimant indicated his swollen, stiffened knee was a recurring injury that he endured about a month prior (July 2014) while on duty. Claimant did not report his prior injury to the Roadmaster.

Claimant denies informing the Assistant Roadmaster that his prior injury occurred at work and the Carrier's claims agent "prompted" him to "amend his original statement" to include reference to Claimant's prior injury. Since there is no evidence that Claimant violated the rules, BMW asserts, the investigative hearing is a "fishing trip by the Carrier in an attempt to elicit any self-incriminating information from [Claimant] in order to negatively influence [Claimant's] pending injury settlement under the Federal Employer's Liability Act. Surely the Carrier's aware of this type of harassment is a violation of the Federal Rail Safety Act 49 US code section 20109."

Having considered the record, the Board finds there is substantial evidence in support of the Carrier's position. Claimant did not report his prior, initial injury that rendered him, as Claimant states, with a knee that would not bend at the end of a workday. Claimant's failure to report that injury of July 2014 violates Engineering Safety Book Core Rule 1 *Rights and Responsibilities* ("report to a supervisor as soon as possible and not later than the end of shift"), GCOR 1.2.5, *Reporting* ("all cases of personal injury, while on duty or on company property, must be immediately reported") and GCOR 1.1.3, *Accidents, Injuries and Defects* ("Report by the first means of communication any . . . injuries").

Given these findings, the discipline imposed is not arbitrary or an abuse of discretion. Therefore, the claim is denied.

Award

Claim denied.


Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016