

Public Law Board No. 7566

Award 28

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference

and

Wisconsin Central Railroad (Canadian National Railroad)

Statement of Claim:

1. The dismissal of Claimant C. Bertrang for alleged violation of USOR - General Rule C - Alert and Attentive, USOR - General Rule D - Reporting Injuries and Defects and USOR - General Rule H - Furnishing Information and Conduct in connection with an incident resulting in a personal injury sustained by him on July 11, 2011 is on the basis of unproven charges, unwarranted, excessive and in violation of the Agreement (Carrier's File WC-BMWED-2011-00032).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Bertrang shall receive the remedy prescribed in Rule 31I of the Agreement."

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

A review of the record shows that Claimant was dismissed from service with the Carrier for violating USOR General Rules C, D and H.

The Organization contends that Claimant was not proven to be inattentive, careless or reckless in how he exited the truck. Further, Claimant testified, and the statements of coworkers corroborated, that he was merely stiff and sore and not injured. According to the Organization, the Carrier merely issued a notice of investigation to an employee based solely upon report of an injury.

The Carrier responds that the evidence established that Claimant reported for work with a pre-existing condition of stiffness and soreness to his back. He did not report the condition to his supervisor. Further, he was not alert and attentive when he exited the vehicle and slipped. Moreover, he did not report the injury when it occurred and did not accurately report his injury on the Carrier form. In support, the Carrier cites testimony of coworkers that Claimant was sore

and stiff at the hotel when they were preparing to report for duty and the entry on the Carrier form indicating when the injury occurred.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there were no procedural violations which void the discipline. A review of the evidence indicates that there is not substantial evidence in the record to establish a violation of the cited Carrier Rules. The evidence established that Claimant reported with a sore and stiff back. Testimony from Carrier witnesses established that a certain amount of stiffness or soreness is normal in the job. There is no evidence in the record to establish that Claimant was suffering from anything other than some normal achiness and stiffness when he reported.

Further, Claimant's statement that he thought he "twinged" his back or was having a muscle spasm when he slipped getting out of the truck does not establish an injury that should have been reported. Claimant thought at the time that it was not an injury, but rather a minor slip that was of momentary consequence and would go away. It did not and Claimant reported the injury approximately two hours later.

This Board finds that generally, the mere incident of an injury, absent more, is insufficient to establish an employee's carelessness, inattentiveness or disregard for the rules.

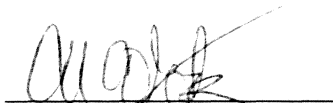
Claim sustained.

Award:

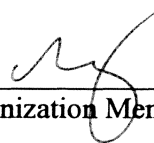
Claim sustained.



Brian Clauss, Chairman



Carrier Member



Organization Member

Dated: November 12, 2014