

BEFORE PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 16

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day suspension] imposed upon Mr. T. Childress in connection with an October 11, 2000 personal injury report and charges of failure to properly and promptly report the incident was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File D41702201/12 (01-0259) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant T. Childress shall now "... be paid for all pay and benefits lost and his personal record cleared of any reference to the charges."

Background:

Claimant T. Childress, a track employee with more than twenty years' seniority, felt pain in his left shoulder as he was replacing a pair of rail tongs on the boom truck on September 11, 2000. Track Foreman R.L. Moore told Claimant at the time that "maybe you should document it." (Tr. at 16). When Claimant did not appear for work the following day, Moore telephoned him and, having learned that Claimant had gone to the emergency room because of increased pain in his shoulder, said: "You should document that." (Id).

Claimant responded that he did not think that his injury was serious enough to warrant filing an injury report, and that it was not necessary to file a report for every little bruise. Later, when Claimant realized that the injury was serious, he told Moore that he had a possible tear in his shoulder. Because Moore told him that Roadmaster Bentley knew about the injury, Claimant

believed that it was not necessary for him to make a formal report. Then, on October 11, 2000, thirty days after Claimant incurred the injury, he filed an injury report because he learned that he had to submit it in order to continue to receive medical insurance benefits for surgery on his shoulder.

By letter dated October 24, 2000, the Carrier notified Claimant that a formal investigation and hearing would be held on November 7, 2000 regarding his alleged failure to properly and promptly report his alleged shoulder injury, making false statements and false reporting of an alleged injury in order to defraud the Carrier. After an April 12, 2001 hearing, which was postponed by mutual agreement, the Carrier advised Claimant in a letter dated May 2, 2001 that he would be assessed a thirty-day suspension for failing properly and promptly to report the injury "in accordance with rules and instructions." (Car. Ex. C). The Organization appealed the decision to suspend Claimant, arguing that the Carrier had failed to provide it with notice of the suspension within twenty days, as required by Rule 25, Section 1(f), and that, on the merits, the Carrier had failed to prove the charges.

Carrier's Position:

The Carrier asserts that, contrary to the Organization's claim, it provided timely notice of the discipline by mailing its May 2, 2001 letter to Claimant and the Organization within twenty days of the April 12, 2001 hearing. On the merits, the Carrier argues that it satisfied its burden of proving that Claimant failed to promptly submit an injury report. In that connection, the Carrier cites the testimony of Track Foreman R.L. Moore, who stated without contradiction that he told Claimant on two occasions, the date of the injury and the following night, that he should document the injury. In support of its contention that the thirty-day suspension was appropriate,

the Carrier cites *Third Division Award No. 32756*, in which the Board upheld a 30-day suspension for an employee's failure to promptly report an injury.

Organization's Position:

The Organization claims that it did not receive the Carrier's decision to suspend Claimant within the twenty-day period required by Rule 25, Section 1(f). In addition, the Organization points to the fact that, contrary to the Carrier's longstanding practice, it failed to cite any rule that Claimant allegedly violated.

On the merits, the Organization contends that the Carrier failed to meet its burden of proof that Claimant violated any rule. Thus, the Organization argues that the Carrier never directed Claimant to complete an injury report. Moreover, according to the Organization, both Track Foreman Moore and Roadmaster Bentley knew that Claimant had injured his shoulder while at work on September 11, 2000.

Findings:

Preliminarily, the Organization argues that the grievance should be granted because the Carrier allegedly did not transmit its disciplinary decision in a timely fashion. This argument must be rejected, however, because no procedural irregularity has been proven.

On the merits, the Carrier contends that it satisfied its burden of proving that Claimant failed to properly and promptly submit a medical report after he injured his shoulder on September 11, 2000. The evidence, however, showed that Moore did not give Claimant clear direction to submit an injury report. Rather, he told Claimant on September 11, 2000: "Maybe you should document it." Likewise, the following day, when he learned that Claimant had gone

to the emergency room to have his shoulder examined, Moore told Claimant that he “should” file a report. When Claimant replied that he did not think that the injury was serious enough to warrant filing an injury report, Moore did not correct him and insist that Claimant was required to submit the report. Although it was not necessary for Moore to bark out an order in militaristic fashion, he probably could have averted the problem by clarifying that Claimant was required to file a report.

Notwithstanding Moore’s lack of clear direction, Claimant bore the ultimate responsibility for filing the injury report – which was required to be submitted for any work-related injury. An employee is required to submit the report whether or not a supervisor directs him to do so. Accordingly, although Moore could have made it clearer that Claimant was required to file the injury report, Claimant cannot avoid all responsibility by arguing that his foreman did not clarify the rule.

With respect to the corrective action taken, the Carrier relies on *Third Division Award No. 32756*, in which the Board upheld a 30-day suspension for an employee’s failure to promptly report an injury. There, however, the Board made clear that the employee in question had had a long history of discipline. As the Board noted:

Failure to report injuries on a timely basis is a serious offense, one with potential to put employees in peril, as it apparently did here. That said, even in the face of Carrier’s justifiable concerns, the Board recognizes that a one month suspension is heavy discipline. What complicates this dispute is the fact that, while not directly before this Board, Claimant’s past record provides important background music, and it is a depressing score. *But for past discipline, the infraction charged may have been considered an isolated lapse in judgment and merited more minor discipline.*

(Car. Ex. G). (Emphasis supplied).

Third Division Award No. 32756 is distinguishable from the instant case, because there is

no evidence that Claimant had a long history of discipline. Rather, it appears that Claimant's failure to submit the report represented "an isolated lapse in judgment" for which lesser discipline is appropriate. Accordingly, the Board holds that a ten-day suspension was the appropriate corrective action to take.

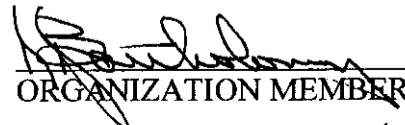
Award:

The claim is granted in part. The Carrier shall (1) reduce Claimant's suspension to ten (10) days; (2) make Claimant whole for the difference between the thirty (30) day suspension originally imposed and the ten (10) day suspension; and (3) ensure that Claimant's personnel record reflects that he received a ten (10) day suspension.


JOAN PARKER, Neutral Member


CARRIER MEMBER

DATED: May 10, 2004


ORGANIZATION MEMBER

DATED: 5-10-04