

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION, INC.

Case No. 39

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The dismissal of Production Foreman W. K. Wright for his alleged violation of CSXT Safe Way Rule 1(i), CSXT Operating Rule 501(4) and (7) and possible falsification of an on duty personal injury that occurred on December 5, 2003 was without just and sufficient cause, based on unproven charges and was excessive and undue punishment [Carrier's File 12(03-0875)].
2. Production Foreman W. K. Wright shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background:

Claimant Walter K. Wright was hired by the Carrier on November 3, 1976. On June 26, 2002, while working as a welder, Claimant strained his left ankle as he was dismounting a welding truck.

In March, 2003,¹ Claimant was working as a production foreman in Florence, South Carolina. On March 29, 2003, Claimant was off for the day and at home. At approximately 8:00 p.m., Claimant telephoned Assistant Regional Engineer of Track John F. Castle to say he was going to the hospital for treatment of a reoccurrence of an ankle injury. Claimant told Castle that the injury had originally occurred while Claimant

¹ All dates hereafter are 2003 unless otherwise stated.

was on duty in December, 2002. Castle instructed Claimant's immediate supervisor, Roadmaster Ted Stewart, to meet Claimant at the hospital to obtain necessary paperwork. The physician's report Stewart obtained indicated that Claimant reported pain in his right foot "after making a sudden turn," and stated during triage that he had sprained his ankle three months before. The treating physician diagnosed a "fracture of the base at the fifth metacarpal," with a prognosis of "good with nonweight bearing for approximately 4 - 6 weeks ... [patient] should have limited activity with his right foot." While at the hospital, Claimant began an Employee's Incident Report for the December 2002 ankle injury he had mentioned to Castle, the hospital, and Stewart. He refused to complete the report, however—stating that he had previously done so—despite Stewart's instructions to fill out the form anyway.

The Carrier had no record of an ankle injury being reported by Claimant in December 2002. By letter dated April 10, the Carrier instructed Claimant to appear for a formal investigation:

in connection with your report to the Carrier on March 29, 2003 of an on-duty personal injury you alleged occurred on December 05, 2002. In addition, you failed to complete the PI-1A, Employees Incident Report, properly as instructed.

You are charged with violation of CSXT Safe Way Rule 1(i), CSXT Operating Rules 501(4) and (7), and possible falsification of an on-duty personal injury.

Safe Way Rule 1(i) provides that oral and written report of accidents or injuries must be made as soon as possible to the supervisor or employee-in-charge. Operating Rule 501 prohibits, *inter alia*, dishonesty, insubordination, and the making of false statements.

Claimant was medically qualified to return to work with no restrictions, effective October 1. At his investigative hearing, Claimant testified that he was intoxicated on the

evening of March 29 and did not remember the events or conversations in which he was involved that evening. Asked "[D]id you comply with [Operating Rule 501] on ... March 29th when you were at the hospital with Roadmaster [Stewart...?," Claimant replied, "Apparently not." Asked "Did you comply with [Safe Way Rule 1(i)] concerning th[e] alleged injury on December 5th?", Claimant replied, "Apparently not." Claimant further testified:

I am an alcoholic. I was intoxicated to the point that I barely remember the pain in my foot. If not for my wife I would not have known calling anybody. I don't remember calling Mr. Castle. I don't remember Mr. Stewart being at the hospital.... I have come to realize that I have a problem. I have contacted the EAP who has put me in touch with a psychiatrist. They have lined me up to start outpatient therapy tomorrow at 9 a.m.

On October 22, the Carrier dismissed Claimant from service. By letter dated November 6, the Organization appealed Claimant's dismissal. The parties discussed the matter in conference on September 20, 2004, but it was not resolved, and therefore is presented to this Board for final decision.

Carrier's Position:

The Carrier contends that Claimant was afforded a fair and impartial hearing at which substantial evidence of Claimant's guilt was presented. Claimant did not deny telling Castle and Stewart that his March 29, 2003 injury was a reoccurrence of a December 5, 2002, on-duty injury. According to the Carrier, Claimant's assertion that he was intoxicated and did not remember the conversations in question is not credible. The Carrier submits that the treating physician's notes indicate nothing regarding Claimant's having been intoxicated, and Stewart noticed no evidence of impairment in Claimant's speech or actions. The Carrier contends that Claimant concocted the December 2002

injury, warranting dismissal for falsifying an on-duty injury. Alternatively, the Carrier argues that if the December 2002 injury did occur, Claimant failed to report it, and extensive arbitral precedent supports dismissal for such misconduct. The Carrier further contends that Claimant's refusal to complete the Employee's Incident Report as Stewart instructed was insubordination, also warranting dismissal.

The Carrier submits that Claimant acknowledged his guilt at hearing, when he was questioned on whether he had complied with Safe Way Rule 1(i) and Operating Rule 501 and replied, "Apparently not." According to the Carrier, the Organization seeks leniency for Claimant based on his twenty-seven years' tenure with the Carrier. However, the Carrier cites arbitral precedent in support of its argument that a plea for leniency is in itself an admission of guilt, and that leniency decisions are the prerogative of the Carrier and not a consideration for this Board.

Organization's Position:

The Organization contends that the Carrier failed to prove the charges against Claimant, and that the Carrier's dismissal of Claimant was arbitrary and capricious. According to the Organization, Claimant did not violate Safeway Rule 1(i) because no on-duty injury actually happened in December 2002. In addition, the Organization argues, Claimant did not violate Operating Rule 501(4) and (7). Claimant mistakenly told Castle and Stewart that he had reinjured the foot he had previously hurt on the job because he is an alcoholic and was intoxicated at the time. The Organization submits that Claimant was open and honest at hearing in explaining the reason for his conduct on March 29, 2003, and had twenty-seven years of unblemished service with the Carrier. Moreover, Claimant voluntarily entered and completed an alcohol treatment program.

Under these circumstances, the Organization contends, Claimant should be reinstated.

Findings:

It is undisputed that on March 29, 2003, Claimant stated to Castle, Stewart, and the treating doctor at the hospital that he had previously injured his right foot in December 2002. He told Castle and Stewart that the injury had occurred on duty. It is also undisputed that the Carrier had no record of the alleged on-duty December 2002 injury, and that, in fact, no such injury ever occurred. Finally, it is undisputed that Claimant refused to comply with Stewart's instruction to complete the Employee's Incident Report regarding the alleged December 2002 injury.

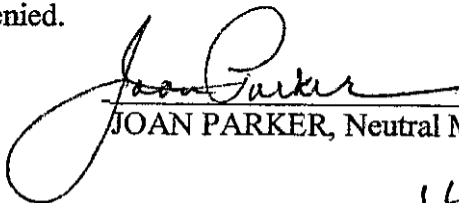
The Organization argues that in making the March 29, 2003 statements regarding the alleged December 2002 injury, Claimant was merely mistaken due to extreme intoxication. The Board finds this argument to be without merit. The Organization presented no evidence refuting the Carrier's witness testimony that Claimant exhibited no signs of intoxication in either his actions or speech on March 29, 2003. Surely, if Claimant had truly been intoxicated to such a degree that his wife had to tell him afterward what had happened that evening, the Organization could have produced Claimant's wife at hearing to support Claimant's assertion. Moreover, Claimant's eleventh-hour effort to seek treatment by scheduling an appointment the day *after* the October 13 hearing (and six months after the March 29 incident) raises a suspicion that he sought such treatment only in order to be able to say at hearing that he had done so. Additionally, even if Claimant had been in the state of extreme intoxication alleged, the Board finds it difficult to see how Claimant legitimately could have confused a *June* 2002 injury to his *left* foot with a *December* 2002 injury to his *right* foot.

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Claimant's motivation for alleging the December 2002 injury cannot be known based on the record evidence. Whether because he believed there was a benefit to claiming that the March 29, 2003 injury was work-related, or for some other reason, Claimant attempted to create a false connection between the March 2003 off-duty injury and a nonexistent December 2002 on-duty injury. The Board finds that because no injury actually occurred in December 2002, the Carrier did not prove that Claimant violated Safe Way Rule 1(i)'s requirement that injuries be reported as soon as possible. The Carrier did demonstrate, however, that Claimant violated Operating Rule 501(4)'s prohibition of dishonesty and (7)'s prohibition of making false statements, when he reported on March 29, 2003, that he had originally injured his right foot while on duty in December 2002. Such misconduct warrants dismissal. In addition, the Organization has failed to refute the Carrier's assertion that Claimant's refusal to comply with Stewart's instructions to complete the Employee Incident Report form constituted insubordination. While Claimant had twenty-seven years of service, no length of tenure can offset the serious misconduct in which he engaged. The Organization's claim must be denied.

Award:

The claim is denied.


JOAN PARKER, Neutral Member


CARRIER MEMBER


ORGANIZATION MEMBER

DATED: 05-18-05

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