

PUBLIC LAW BOARD NO. 7008

PARTIES TO THE DISPUTE:

CSX Transportation, Inc.

-and-

**Brotherhood of Maintenance of Way Employees
Division of the International Brotherhood of Teamsters**

STATEMENT OF CLAIM:

In accordance with the provisions of Rule 25, Section 3, of the CSXT/BMWE Agreement, dated June 1, 1999, the following will serve as our appeal of the discipline assessed to BMWE represented member, V. J. Ash'Shaheed of "immediate dismissal from service of CSX Transportation and forfeiture of all rights and seniority" by CSXT Atlanta Division Engineer M. A. Bossone, as a result of a formal investigation which was held June 1, 2007...

... in connection with the objections raised during the hearing, the reasons stated in this appeal and furthermore violations of the employee's rights and fringe benefits of the Agreement, we hereby request Mr. Ash'Shaheed, ID#*****, be exonerated from these charges against him. We request Mr. Ash'Shaheed immediately be reinstated as an employee with CSXT, his seniority based on the BMWE Agreement will be placed back on the appropriate rosters, and be compensated with all lost wages due.

OPINION OF BOARD:

This case presents the appeal of the Carrier's termination of Mr. Vincent J. Ash'Shaheed, who was hired on August 8, 2004, and assigned at the time of his termination as a Track Inspector on the Atlanta Division, working for Roadmaster Bruce Skinner. On May 2, 2007, Mr. Ash'Shaheed telephoned Roadmaster Skinner and advised that he had some "pain and tingling in his right leg", which was "not work related" but which he was reporting to the Carrier anyway, "just in case he needed to take some time off from work". Roadmaster Skinner reported this unusual conversation

to Ricky Johnson, Engineer Track, who immediately telephoned Claimant Ash'Shaheed to ask if he was reporting a work related injury. It is not disputed that Claimant Ash'Shaheed responded, in words or substance, that the pain was not work related but rather had “started up on the previous Tuesday or Wednesday morning”, in his home when he was “getting out of bed”.

The next day, May 3, Claimant Ash'Shaheed called Mr. Johnson to report that he was “in pain” and had taken some medication to relieve same. However, “after the medication wore off, the pain came back”, so he had scheduled a doctor’s appointment for later that afternoon. It is not disputed that the Claimant then asked if there was “any paperwork to sign”. Mr. Johnson asked the Claimant once again if he was reporting an on duty injury, and Claimant Ash'Shaheed once again answered: “No.” At that point, Mr. Johnson instructed Claimant Ash'Shaheed that it was his own responsibility to get medical treatment using his insurance card. Approximately 20 minutes after that telephone conversation with Mr. Johnson, Claimant Ash'Shaheed called Roadmaster Skinner, stating that he thought “the Carrier was not treating [him] fairly” and announced that he now wished to report suffering an on-duty injury.

Mr. Johnson recalls that when he asked the Claimant to explain this latest development, the Claimant stated that since he could not afford to be off work without pay, he was turning in an on-duty injury. Thereafter, Johnson and Ash'Shaheed met at the physician’s office where the Claimant filled out and signed “Employees Incident Report” (Form P1-1A) wherein he complained of persistent pain running down his right leg and foot since the morning of April 25, 2007, but indicated that he did not know the date or location of the precipitating “incident” which was causing his pain. In addition, Mr. Johnson presented the Claimant with a “Form CJ-24”, to be completed by the treating physician. Mr. Johnson then waited and collected the completed physician’s report from the

Claimant and also spoke with the physician before he left the medical facility. The physician indicated in his report that Mr. Ash'Shaheed stated that the pain started occurring on April 25, 2007, but that his patient did not recall any particular injury to cause the pain. In his subsequent testimony, Mr. Johnson asserted that the treating physician told him that the pain Claimant Ash'Shaheed was having "was not related to an acute injury at work or any significant thing" but rather was a condition known as "sciatica"; which he attributed to "wear and tear on the back from different factors associated with Mr. Ash'Shaheed's health".

Following due notice of charges and a formal hearing at which the Claimant appeared with representation by the BMW, the Carrier concluded from the above-described facts that Mr. Ash'Shaheed had violated CSX Operating Rule A, CSX Operating Rule GR-2 (parts 4 and 7) and CSX Safeway Rule GS-5 by failing to timely report an alleged injury and/or falsely reporting an injury; for which he was discharged. Those cited rules state:

General Rule A "Employees must know and obey rules and special instructions that relate to their duties. When in doubt as to the meaning and application of any rule or instruction, employees must ask their supervising officer for clarification.

GR-2 All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

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4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent

7. Make any false statements

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GS-5. Reporting of Injuries or Incidents (CSX Transportation April 10, 2007 System Bulletin Safe Way 5 was changed to read as follows:

A. On Duty Injuries Any employee experiencing an on-duty injury must report the injury to a supervisor at the time of the occurrence or prior to leaving the property on the day of the occurrence so that prompt medical treatment may be provided. A Form PI-IA must be completed by the employee reporting the injury. (Exception: An employee departing

the property to obtain urgent medical attention for a serious injury must report the injury to a supervisor and complete the Form PI-IA as soon as practicable.)

B. Medical Attention Employees must immediately notify their supervisor of the decision to seek medical attention as a result of an on-duty injury. This requirement is intended to facilitate work coverage and timely regulatory reporting.

C. Off Duty Injuries Employees who sustain an off-duty injury that will in any way affect performance of their duties must report the injury to their supervisor prior to reporting for duty,

D. Information Concerning Injuries Employees with knowledge or information concerning an injury or accident to themselves, another employee or nonemployee must report the information to their supervisor at the time of the occurrence so that emergency assistance and proper medical care can be promptly provided,

E. All Incidents Employees must immediately report to the train dispatcher or supervisor all incidents involving equipment and any other incident involving loss or damage to CSX property

The Organization and Claimant Ash'Shaheed appealed Carrier's discipline, asserting that he had in fact complied with CSX Operating Rule GR-2 (parts 4 and 7) when he told the truth about his uncertainty and therefore confirmed being honest, not dishonest. The Organization also asserts that Claimant Ash'Shaheed "did everything he could possibly do, not to make a false statement" and that the Employee Incident Report is evidence of honesty rather than dishonesty.

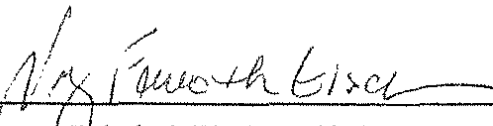
During the investigation, it was brought out that Claimant Ash'Shaheed had previously reported sustaining an on-duty work injury at CSX the previous year. Thus, there is no question that he knew how to do so in compliance with the rules and his awareness of the requirements for prompt, complete and honest reporting procedures that must be followed when reporting an on-duty injury. His testimony during the June 1, 2007 investigation reveals major inconsistencies in his assertions that there were two "incidents", the sciatica he reports spontaneously erupting on April 25, 2007 and "different pain" he felt on May 2, 2007, which he belatedly and unpersuasively tried to link to work he had performed on May 1, 2007. Not only does the PI-IA form, which the

Claimant completed and signed, not coincide with his later statement but at no time on May 2, 2007 did he tell anyone that the pain he reported that day was not directly traced back to the pain he initially felt on April 25, 2007. Obviously, the Carrier officials who reviewed the testimony credited the Carrier witnesses and did not buy into the Claimant's "two separate incident" theory.

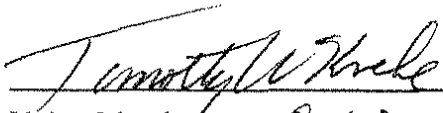
Our review of the evidence reveals no basis upon which we can justify arbitral intervention to reverse the Carrier's finding that the Claimant was culpable as charged, or to modify the discharge penalty for such a serious proven violation involving safety rules and personal honesty.

AWARD

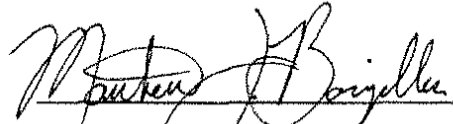
Claim denied.



Nancy Faircloth Eischen, Chair



Union Member Oct 23, 2008



Company Member Oct. 23, 2008