

PUBLIC LAW BOARD NO. 7104

AWARD NO. 37

CASE NO. 37

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Bridge Tender Vernita Rainey for violation of CSX Operating Rules General Rule A and General Regulations GR-2 and Csx Safe Way Rule GS-5 in connection with failure to report a personal injury occurring on July 29, 2007 was unjust, unwarranted and in violation of the Agreement (System File D70114108/2008-028351).
2. As a consequence of Part 1 above, we request that the charge letter dated March 21, 2008 and the terminated letter dated March 20, 2008 and all matter related thereto, be removed from Ms. Rainey's personal file and she shall be made whole for all losses suffered as a result of the Carrier's actions."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was hired on June 25, 2007. Just over one month later, she was working as the Bridge Tender on the Rigolets Draw Bridge in Rigolets, Louisiana when it was struck by a barge and sustained minor damage. According to Claimant's testimony, the impact caused her to fall down and injure her left knee. Although the pain was immediate, she did not report any injury to any Carrier official nor did she file any written injury report. She did, however, complete a Collision Report that described the barge incident. The Collision Report said nothing about suffering any injury.

Moreover, when a Carrier official investigated the collision and discussed the incident with her, once again she said nothing about sustaining any injury. During an evaluation discussion held with her on August 1, 2007, no report of injury was made.

Claimant was furloughed on August 3, 2007 after completing some 39 days of her 60-day probationary period. She did not work for the Carrier again.

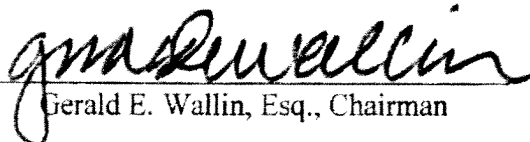
According to the record, the first notice the Carrier received of Claimant's claimed injury came in the form of a letter from her attorney dated August 15, 2007 demanding that she be paid pursuant to FELA.

During the investigation, claimant admitted she did not report the alleged injury nor did she discuss it with any Carrier officials in conversation. According to her testimony, she was not aware that she needed to do so. Claimant also admitted she underwent one week of new-hire training during which she received copies of the rules noted above in the Statement of Claim and some were discussed. However, she did not read them and she could not recall if she received any specific training on them. Moreover, she did not ask any questions about them during training or in any later conversations with any Carrier officials.

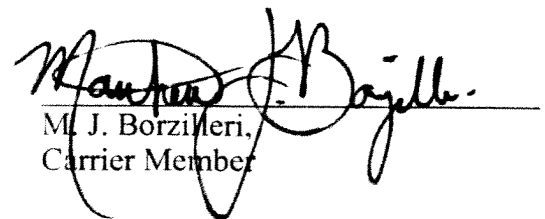
We have carefully reviewed the on-property record for the instant dispute. Given the pertinent facts, we find that the Carrier's determination that claimant violated the cited rules is supported by substantial evidence in the record. In light of the overall circumstances, our review does not reveal any proper basis for disturbing the Carrier's disciplinary decision.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


T. W. Kreke,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: July 2, 2010