

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CSX TRANSPORTATION, INC.

Case No. 43

STATEMENT OF CLAIM:

Claim that Mr. R. L. Lewis, ID # 139233, be cleared of the charges leveled, and made whole for all lost wages and benefits account being suspended from service for thirty (30) calendar days as a result of an investigation which was held on December 8, 1994, at Thomasville, Georgia.

FINDINGS:

Claimant R. L. Lewis was employed by the Carrier as a trackman in Thomasville, Georgia.

On November 7, 1994, the Carrier notified the Claimant to appear for a formal investigation and to provide medical documentation from his treating physician in relation to his having violated Safety Rule 1 when he failed to timely report back injuries he sustained on Carrier property on September 27 and 29, 1994. The Claimant reported those injuries to Roadmaster B. R. Brooks on November 1, 1994, and subsequently removed himself from duty.

After two postponements, the hearing took place on December 8, 1994. On December 28, 1994, the Carrier notified the Claimant that he had been found guilty of violating Safety Rule 1 and was being assessed a thirty-calendar-day suspension, commencing January 1, 1995, and continuing through January 30, 1995.

The Claimant filed his appeal, challenging the Carrier's decision.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is

sufficient evidence in the record that the Claimant failed to notify the Carrier for thirty-two days of an alleged injury that occurred on duty. The record reveals that the Claimant told the Carrier, for the first time, on November 1, 1994, that he had incurred an injury that allegedly happened on September 27 and 29, 1994. The Claimant told the Carrier, in a letter dated October 31, 1994, that on or about September 27, 1994, he and his co-workers were installing switch ties; and by the end of the day, his back became sore and irritated. He stated that two days later, he and his co-workers installed more switch ties and he "felt something pop in my back." The Claimant also stated in that letter that he reported the injury to his supervisor the same day. At the time, he thought it was only a sore back; but when it became much worse, he went to a doctor.

The Carrier presented extensive evidence at the hearing from the foreman and other supervisors that the Claimant had not reported any injury on or about September 27 or 29, 1994. Even the Claimant stated that on September 27, 1994, he "did not definitely come out with it 'cause I figured I was just sore." As far as on September 29, the Claimant stated that he said to his foreman, "I think I done messed my back up now." The Claimant continued to work that day and on subsequent days. The Carrier's witnesses denied they were told anything by the Claimant.

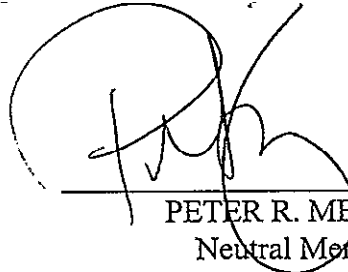
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant received a thirty-day suspension for failing to timely notify the Carrier of an alleged injury that occurred on the job. That is an appropriate penalty for this

serious violation. Therefore, the claim must be denied.

AWARD:

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

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Carrier Member

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Organization Member

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_