

BEFORE SPECIAL BOARD OF ADJUSTMENT 1037

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

Case No. 41

STATEMENT OF CLAIM:

The ten (10) days actual suspension of Maintenance of Way Employee L. L. Mobley ID# 171053, as a result of an investigation held on November 21, 1994, in Cumberland, Maryland, account of a personal injury which occurred on October 10, 1994, when Claimant was untangling cable on rail dogs from block cable on Gallion Crane, was without just cause. Also, that Mr. Mobley's record be cleared of this incident and [sic] compensated for all expense and wage loss.

FINDINGS:

On October 17, 1994, the Carrier notified the Claimant that a formal investigation would be held on October 25, 1994, in connection with an injury that the Claimant sustained to his little finger on his left hand while operating a Gallion Crane on October 10, 1994.

After a postponement, the hearing commenced on November 21, 1994. On December 9, 1994, the Carrier notified the Claimant that he had been found guilty as charged and assessed a ten-day actual suspension.

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 the Carrier has not met its burden of proof that the Claimant violated any Carrier rules,

regulations, or procedures when he sustained an injury to the little finger on his left hand on October 10, 1994. Since the Carrier bears the burden of proof in cases involving the issuance of discipline, this claim must be sustained.

The record reveals that the Claimant was never charged with any wrongdoing in the letter dated October 17, 1994. That letter merely states that the Claimant sustained an injury and the Carrier wanted to convene a hearing to develop the facts and place the responsibility, if any, in connection with the incident. Consequently, there was really no notice to the Claimant that he was facing the possibility of discipline for any rule violations since nothing was stated about that in the Notice of Hearing.

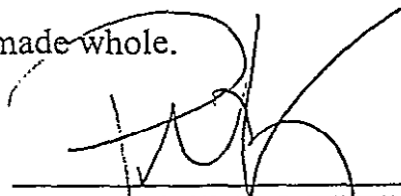
Moreover, although there was some testimony by Carrier witnesses that the Claimant may have been issued a document entitled, "Ten Aids to Injury Prevention," as well as safety rules and other policies regarding "pinch points" and rights and responsibilities, there was nothing developed at the hearing that indicated the Claimant violated any rules when he performed the task to which he was assigned on the date in question. The Claimant's testimony made it clear that he was attempting to follow the orders that he had received from supervision given the manpower in his area and the tools that he had to work with.


It is fundamental, and numerous Boards have held, that just because an injury occurs does not mean that there was any violation of procedures allowing the discipline of employees. In this case, there was an unfortunate occurrence which resulted in an injury

to the Claimant. However, in order for the Carrier to issue discipline, it must first charge the Claimant with wrongdoing and then show that he was in violation of some rules or procedures in the work that he performed before it can legitimately issue the discipline to the Claimant. In this case, the Carrier was unable to prove that its nineteen-year employee acted improperly in violation of rules or procedures justifying discipline. Since the Carrier did not meet its burden, the claim must be sustained.

AWARD

Claim sustained. The ten-day suspension of the Claimant shall be removed from his record and he shall be made whole.

  
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PETER R. MEYERS  
Neutral Member

  
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Carrier Member

  
  
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Organization Member

DATED: 4-11-95  
I Dissent

DATED: 4/17/95