

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 237

STATEMENT OF CLAIM:

Appeal of the discipline, a ten-day suspension, issued to Claimant G. Mays (System File NEC-BMWE-SD-4373D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a Track Foreman, headquartered at Penn Station in New York, New York.

By letter dated August 4, 2003, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant violated the Carrier's Standards of Excellence and Maintenance of Way Safety Rules when the Claimant allegedly failed to immediately report an injury that he allegedly sustained while on duty. After a postponement, the investigation was started on August 21, 2003, recessed and reconvened on September 19, 2003, and recessed and reconvened on November 26, 2003, on which date the investigation was concluded. By letter dated December 11, 2003, the Claimant was notified that as a result of the investigation, he had been found guilty of the charges, and he was being assessed a ten-day suspension. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier initially contends that the evidence in the record clearly establishes that the Claimant did not immediately report his alleged injury to his supervisor, as required by the Standards of Excellence on Safety and General Rule 4000. In fact, the record shows that the Claimant did not report his injury until twenty-seven days after it allegedly occurred. The Carrier maintains that the Claimant's testimony establishes his guilt. The Claimant admitted that he felt pain on June 20, 2003, but that he did not report it until "a couple of weeks later." The Carrier insists that there is no doubt that the Claimant knew something was wrong on June 20th, that he did not tell anyone that he was hurt during work, and that he first reported the injury weeks after it occurred.

The Carrier asserts that testimony and evidence adduced at the fair and impartial investigation clearly establish that the Claimant is guilty as charged. The Claimant admittedly was aware that he sustained an injury on June 20th, and he did not immediately report the injury to his supervisor, as required. The Claimant's testimony also makes it clear that he did not report his alleged injury at any time on the date that it occurred. The Carrier maintains that failure to report an injury is a serious violation; continued work could aggravate the injury, place the employee and his co-workers in jeopardy, and prevent the Carrier from conducting a proper review of the circumstances.

The Carrier argues that there can be no exception to or relaxation of safety rules. Safety is a primary consideration in the railroad industry, and it is to the employees' benefit to report all evidence of injury, even if an employee does not realize that an actual injury has occurred. Addressing the Organization's contention that the Claimant did not know he had a hernia until he went to see a specialist, and that he thereafter immediately

reported the injury to his supervisor, the Carrier maintains that these allegations are merely a self-serving attempt to mitigate the Claimant's guilt. The Carrier emphasizes that the Claimant definitively identified June 20 as the date on which he was injured, and he clearly acknowledged that he was aware of sustaining the injury on this date because he "felt it." The Carrier insists that it is irrelevant that the Claimant may not have known what type of injury he had sustained because the record clearly shows that on June 20, the Claimant was aware that he had sustained an injury and failed to immediately report that injury to his supervisor.

As for the Organization's assertion that the Claimant had told his supervisor that he had a pain in his stomach, the Carrier emphasizes that the evidence establishes that the Claimant did not advise his supervisor that his stomach was hurting on June 20, 2003, or that his stomach hurt as a result of an injury sustained on June 20, 2003. Supervisor Lawrence's testimony establishes that the Claimant reported that his stomach was bothering him well after the date that the Claimant allegedly was injured. The Carrier insists that there is no evidence that the Claimant informed his supervisor on June 20, 2003, that his stomach was hurting or that he had been injured.

The Carrier then disputes the Organization's allegation that the assessed discipline was harsh because the Claimant never was counseled on the timely reporting of injuries. The Carrier emphasizes that it has the right and the responsibility to establish and enforce rules for the safe conduct of its operations. Moreover, the Carrier's employees are required to have a thorough knowledge of and to obey such rules. The Carrier argues that it is necessary to make it clear, through disciplinary action, that the safety of the

Claimant, his fellow employees, and the public should be of the utmost concern. The Carrier maintains that violations of its Safety Rules are serious infractions that warrant the assessment of discipline. The Carrier asserts that a ten-day suspension cannot be viewed as excessive, given the Claimant's failure to follow the Standards of Excellence and the Safety Rules. The Claimant was guilty as charged, and the ten-day suspension was warranted.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the evidence demonstrates that the Claimant was not aware that he had a hernia until he went to see a specialist in July 2003. The Claimant thereafter immediately reported this injury to his supervisor. The Organization emphasizes the testimony of the Claimant's doctors that a person may have a hernia but not be aware of it. Moreover, the Claimant did inform his supervisor that he had a pain in his stomach.

The Organization additionally argues that the discipline imposed on the Claimant was excessive. The Organization asserts that Supervisors Santini and Lawrence admitted that the Claimant had not been counseled on the timely reporting of injuries.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

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

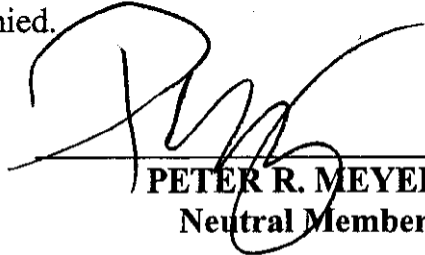
there is sufficient evidence in the record to support the finding that the Claimant failed to promptly report the injury that he incurred on duty. The Claimant did not report the injury until July 17, 2003, twenty-seven days after he was injured on June 20, 2003. The record reveals that the Claimant felt pain and it was later determined that he had suffered a hernia. It is clear that when the Grievant felt that pain in his stomach that he should have reported that immediately to one of his supervisors in order to be in compliance with the rules.

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.

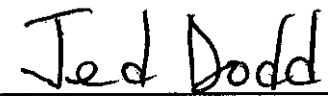
The Claimant in this case was only issued a ten-day suspension. Failure to promptly report an injury often leads to a dismissal or much greater discipline. This Board cannot find that the Carrier's issuance of a ten-day suspension to this Claimant for the violation was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 8/26/05



CARRIER MEMBER
DATED: 8/27/05