

PUBLIC LAW BOARD NO. 4504

Case No. 21  
Award No. 21

Parties

to Dispute: International Association of Machinists and Aerospace Workers vs CSX Transportation, Inc.

Statement

of Claim: "(1) The discipline assessed Claimant G. F. Keller, ten (10) days' actual suspension from service, for alleged failure to properly report an injury, following an investigation held September 28, 1988, was without just and sufficient causes.

(2) The Claimant shall now '\*\*\* be paid for all time lost and have his record cleared of any references to the charge.'"

Findings:

The Board upon the whole record and all the evidence, finds that the Parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, that the Board, is duly constituted by agreement, and has jurisdiction over the Parties and subject matter of this dispute. The record indicates that the Parties were given due notice of the hearing.

The Claimant, G.F. Keller, was assigned as a Machinist at the Carrier's locomotive maintenance and repair facility in Huntington, West Virginia. During August of 1988 the Claimant sustained an on the job personal injury on or about August 8th. The incident causing injury to the Claimant occurred while he was engaged in repairing a locomotive. Another employee who was using an air pressure hose accidentally sprayed the Claimant with grease and oil

causing injury to the Claimant's ear. The Claimant told his supervisor on August 16th that he had received an on duty injury resulting in damage to his ear. On August 30th the Claimant completed the Carrier's standard injury report form and submitted the form to his supervisor. As a result of this sequence of events the Carrier sent a letter to the Claimant notifying him of an investigation to be conducted based upon his alleged violation of General Safety Rule #37, when he failed to file an injury report in a timely manner.

"Employees must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while the employee was on duty or on Company property. In turn, upon receipt of the report, the employee in charge or the supervisor must make a prompt written report of the injury. The injured employee must furnish the written injury report on the prescribed form; or if the injured employee is unable to do so, the required report must be furnished by the supervisor or by the employee in charge.

Employees suffering off-duty personal injury that adversely affects their ability to perform normal assigned duties must report their condition to the proper authority prior to reporting for their next shift or tour of duty after such injury."

Upon conclusion of the investigation the Carrier determined that the Claimant was guilty as charged and issued a ten day actual suspension.

The Organization on behalf of the Claimant has appealed his claim to this Board seeking expungement

of the discipline from his record and pay for all time lost.

The Organization alleges that the Carrier did not properly discipline the Claimant because he is charged with violating a safety rule unilaterally imposed by the Carrier. The Organization contends the application of Agreement Rule #48 of the contract was the appropriate procedure in this instance and that the Claimant fully complied with its provisions.

Specifically, Agreement Rule 48 provides the following:

"Employees injured while at work will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment, and when able employees shall be permitted to return to work without signing a release pending final settlement of these cases."

Additionally, the Organization contends that the Carrier failed to meet its burden of proof in establishing Claimant's guilt and the justification for the discipline assessed.

The Carrier took the position that no procedural violations occurred in the handling of this case. Additionally, the Carrier maintained that its finding of guilt and disciplinary action was reasonable based upon the substantial evidence adduced

at the investigation.

This Board has carefully reviewed the arguments and record presented in this claim. We conclude that the Claimant's ten day actual suspension must be upheld and the claim denied. The evidence presented at the investigation indicated that the Claimant knew of this injury on August 8, 1988 and that he continued to work without reporting the injury. Further, the record reflects that the Claimant did not complete Carrier's injury report form until twenty-two (22) days later on August 30th. We find nothing in the record which would mitigate the Claimant's failure to promptly file an injury report. The Claimant's own testimony indicated that he did not file an injury report for twenty-two days, nor verbally inform the Carrier of his injury for eight days even after receiving treatment from a doctor for the ear infection. Such conduct defeats the purpose of safety rules and cannot be condoned.

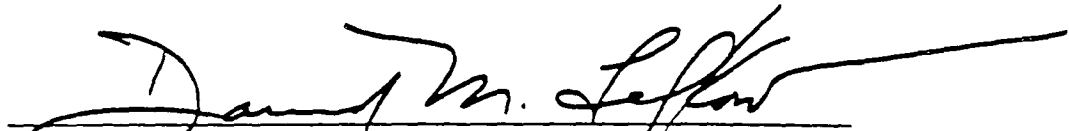
This Board finds Carrier's Safety Rule #37 to be typical of work rules throughout the industry, which serve to require the immediate reporting of an injury no matter how small or seemingly unimportant. Safety is of utmost concern to both Employees and Employers.

Rules promulgated to help insure safe working conditions must be strictly adhered to and enforced in order to be effective. We do not accept the Organization's argument that the Carrier applied the wrong rule in this case. The Board did not find a conflict between General Safety Rule #37 and Agreement Rule #48 and therefore rejects the Organization's argument that the Claimant complied with the appropriate rules and regulations regarding his injury. What is clear from this record is the Claimant's failure to immediately report his injury and the resulting violation of Carrier's Safety Rule.

It is for the protection of both the Employee and the Carrier that safety procedures require immediate and accurate information regarding workplace injuries. Delays in reporting, place both parties at risk and create potential liabilities that may be avoided if safety rules are properly followed. We find the Carrier's disciplinary action to be a reasonable, measured response to Claimant's clear rule violation and therefore uphold its action and deny this claim.

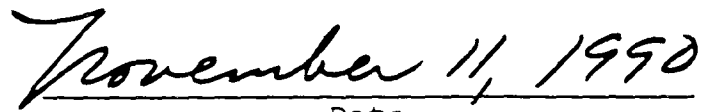
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Award: Claim denied.

  
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David M. Lefkow, Chairman and Neutral Member

  
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R.D. Hiel, Carrier Member

  
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W.D. Snell, Employee Member

  
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Date  
Chicago, Illinois