

**PUBLIC LAW BOARD NO. 7254**

**PARTIES ) UNITED TRANSPORTATION UNION  
TO )  
DISPUTE) BNSF RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

**Claim and appeal in behalf of Havre, MT Conductor Vickie R. Stellingwerf for immediate return to service with pay for time lost, including attending investigation, and complete clearance account dismissed from the service for alleged violation of GCOR Rules 1.1.3, 1.2.5 and 1.6 (failure to report an alleged personal injury that allegedly occurred at approximately 0330 hours on May 28, 2004 and first reported to Trainmaster Mike Kennelly at approximately 1735 hours on July 7, 2004) on December 29, 2005. (UTU File: DISP STELLINWERF 12/29/05; Carrier File: 53-06-0575D)**

**FINDINGS:**

**The Board, after hearing 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; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.**

**By letter of July 12, 2004, Claimant was notified to report for an investigative hearing on July 15, 2004 for the purpose of ascertaining the facts and determining her responsibility, if any, in connection with a failure to report personal injury that allegedly sustained while lifting a knuckle on May 28, 2004 until July 7, 2004. In this respect it is noted that while the Claimant stated on a formal written Report of Personal Injury as filed under date of July 12, 2004, that the date of injury was May 28, 2004 that she described the personal injury in the following manner: "Lifting knuckle & Lining switch in Harlem (East) - Switch was stiff but lineable." The latter mentioned was subsequently alleged to have occurred on June 16, 2004. The Claimant listed the first date of treatment or diagnosis to be June 26, 2004 for what she stated was: "Pulled muscles (Back)."**

**The company investigation as scheduled for July 15, 2004 was postponed a total of 14 times at the request of Claimant or her representative, before the Carrier determined there be no further postponements and that a hearing be held on December 15, 2004.**

**For reasons best known to Claimant, she did not attend the December 15, 2004 hearing, and it was therefore held in absentia. A representative from the**

Organization was present and provided opportunity to offer a defense in behalf of Claimant and to otherwise participate in the hearing.

By letter of December 29, 2005, Claimant was notified by the Carrier that it found the record as presented at the company investigation to support a finding of guilt to the charges and that she was thereby dismissed from service for violation of Rules 1.1.3, 1.2.5 and 1.6 of the General Code of Operating Rules.

The above referenced rules read as follows:

### **1.1.3 Accidents, Injuries and Defects**

Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the accident.

### **1.2.5 Reporting**

All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. The injured employee must also complete the prescribed written form before returning to service.

If an employee received a medial diagnosis of occupational illness, the employee must report it immediately to the proper manager.

### **1.6 Conduct**

Employees must not be:

- 1. Careless of the safety of themselves or others.**
- 2. Negligent.**
- 3. Insubordinate.**
- 4. Dishonest.**
- 5. Immoral.**
- 6. Quarrelsome.**
- or**
- 7. Discourteous.**

The Organization has advanced procedural argument in a contention that discipline be overturned or set aside. It says the transcript of hearing reveals a prejudgment of guilt by the Carrier that Claimant had violated the cited rules without benefit of an impartial review of the hearing proceedings. Further, the Organization says Claimant was dismissed on a questionable and prolonged record, with the delay in submitting a written personal injury form having been caused by physical issues and a medication regimen which likewise prevented the Claimant from attending the investigative hearing.

The Organization says the record shows that Claimant suffered from soreness following the May 28, 2004 incident of changing out of a knuckle, for which she had sought the assistance of the train's Engineer, and, while she continued to work with a muscle strain, she aggravated that soreness on June 16, 2004 when lining a "stiff" switch, at which time she was medically advised that she had pulled muscles. In this respect, the Organization says the record shows that Claimant had reported or attempted to report the injuries after each of the initial occurrences, and that after being advised by her doctor on June 26, 2004 that she had a herniated disc in her back, Claimant, in a conversation on or about June 29, 2004 with a Trainmaster, verbally reported the personal injury, but that the Trainmaster did not ask her to file a formal written report.

For the above mentioned reasons the Organization maintains that the record does not reach a level to support discipline of a dismissal from service or even a suspension from service.

The Board has given studied consideration to Organization argument. We do not, however, find the record to support the Organization's several contentions.

Claimant was properly notified of the charges; extended benefit of numerous postponements of the hearing; while not present at the hearing, she was duly represented by an officer of the Organization of her choice; her representative was provided opportunity to make statements, question the six company witnesses and five other witnesses who offered testimony, and, to introduce and examine exhibits. In the circumstances, the Board is satisfied that there was no prejudgment and that the company investigative hearing was conducted in a fair and impartial manner.

As to the merits of the claim, the Board concurs with Carrier findings that none of the scheduled witnesses testified that Claimant had indicated to them that she was injured, except for her husband. Further, none of the Carrier officers who it was alleged Claimant had attempted to or made a report of injury supported such a contention. Lastly, testimony of a Carrier officer involving a conversation he had with Claimant was to the effect that she was laying off account taking medication for an off-duty injury, or what the Carrier offers as reason to suspect that it was an off-duty injury that became a purported on-property injury.


Certainly, in view of the fiduciary responsibility and contingent liability that a carrier faces under the Federal Employers Liability Act and Federal Safety Appliances Act in being liable for damages to any person suffering injury resulting in whole or in part by reason, among other things, any defect or insufficiency, due to its negligence, in the operation of, for example, as alleged here, a knuckle or stiff hand thrown switch, it cannot be said that the requirement for the prompt reporting of a personal injury or defective equipment is unreasonable. Nor can it be said in the light of this fiduciary responsibility that a proven failure to comply with rules prescribing the timely reporting of an injury is not just cause for the imposition of stern discipline, including that of a dismissal from service.

The record showing that the Carrier has met a necessary burden or proof to conclude that Claimant was guilty as charged of a serious or major violation of rules, the Board finds no basis to substitute its judgment for the that of the Carrier in its decision to terminate Claimant from its service. Accordingly, the claim will be denied.

AWARD:

Claim denied.

  
Robert E. Peterson  
Chair & Neutral Member

  
Roger A. Boldra  
Carrier Member

  
Jay L. Schollmeyer  
Organization Member

Fort Worth, TX

Dated: 11-17-09