

PUBLIC LAW BOARD NO. 7254

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

STATEMENT OF CLAIM:

Claim and appeal in behalf of Denver, CO Switchman R. S. Pierce for complete record clearance, account Level S, thirty (30) day record suspension for alleged violation of GCOR Rules 1.2.5 and 1.4 (alleged late reporting of injury) on November 10, 2004. (UTU File: DISP PIERCE 11/10/04; Carrier File: 58-05-0001)

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.

As set forth in the above Statement of Claim, the issue that gives rise to discipline is a charge of having made a late reporting of an alleged personal on-the-job injury in violation of Rules 1.2.5 and 1.4 of the General Code of Operating Rules (GCOR).

In part here pertinent, GCOR Rule 1.2.5 states: "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."

Claimant reported to Carrier supervisory officials on November 10, 2004 that he felt a twinge in his Achilles tendons while climbing through cars during his tour of duty on November 4, 2004, or, as Claimant also said, "a couple weeks earlier." Claimant also said that his Achilles tendons had become increasingly tight "over the ensuing weeks," resulting in sharp pains and a burning sensation. The Claimant placed a like written statement on a personal injury report form that he filed under date of November 10, 2004.

It is apparent that Claimant failed to be in compliance with the aforementioned GCOR rules in a failure to have immediately reported the injury when it was alleged to have occurred a couple of weeks prior to his making a report of the alleged injury, much less when he said he noticed an increase in sharp pains and a burning sensation over the ensuing two weeks.

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 employee or person suffering injury resulting in whole or in part by reason, among other things, any defect or insufficiency due to its negligence, it cannot be said that the requirement for the prompt reporting of a personal injury is unreasonable. Nor can it be said in the light of this fiduciary responsibility that an evident or proven failure to comply with rules and instructions governing the timely reporting of an injury is not just cause for stern discipline, including dismissal from service.

The record showing that the Carrier has met a necessary burden of proof to conclude that Claimant was guilty as charged of a serious violation of rules, the Board finds no basis to substitute its judgment for that of the Carrier in its decision to administer the Level S thirty day record suspension here on appeal. The claim to set discipline aside will, therefore, 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