

Mr. P. J. Murphy - Regional Director Labor Relations  
Command Center  
1700 West 167<sup>th</sup> Street  
Calumet City, IL 60409

April 25, 2003

Dear Sir:

Please list and consider the following claim. If you agree it is allowable please notify all concerned parties. If not, complete the memorandum covering claims and return it to me for additional handling.

**Claim: D-15-03-G:** Conductor **DL Roberts, ID # 373938** for his service record cleared of all charges, reimbursement of all earnings lost account of attending investigation, compensation for any and all medical expenses incurred while being deprived of his medical and dental coverage. Recovery of all lost wages plus vacation pay and rights lost during dismissal as a result of the investigation held on March 11, 2003 for alleged falsification, circumstances and statements of facts made relative to claimant's injury which occurred on February 25, 2003 while on-duty on train G09423 at approximately 2245 hours. Additionally claimant was dismissed for allegedly providing unsubstantiated and false information on CSXT report and information stated to company officers concerning incidents reported by claimant on February 26, 2003.

***Discipline assessed – DISMISSED***

**Employees Statement of Facts:** Carrier contends that on March 01, 2003, claimant was sent a US Certified Letter Number 70023150000198423638 which he never received. Exhibit #4 and #5 show attempts to deliver USPS Certified Letters, but they were different and separate USPS Article Numbers than the aforementioned Certified Letter. Carrier officers RS Updike and BE Steigmeyer even approached him at his residency to harass him and attempted to hand deliver his investigation notice. Claimant was being charged with alleged falsification and circumstances and statements of facts made by him relative to an injury which he sustained on duty. Claimant was directed to attend a formal investigation to be held at the Auburn Inn, 225 Touring Drive, Auburn, IN on March 04, 2003 at 0900 hours CSX time. It was postponed pending claimant's return to service due to the fact he was off injured. The investigation was later held at The Best Western Hotel, 621 Professional Way, Kendallville, IN on March 11, 2003 at 0900 hours over the objection of the organization. (See page 2 lines 35-37)

During the investigation proceedings, the carrier admitted numerous times that the claimant had in fact been injured while on-duty, but disagreed on how he was actually injured, even though it was all complete speculation on their part. District Superintendent RS Updike on page 51 lines 37-39 agreed that it was possible that the claimant could have hit the placard with his knee if he had slipped. It was also indisputable that the claimant had been injured while picking up cars at the LaPorte County Co-op at Wellsboro, IN. (see page 13 lines 26-29; page 41 lines 21-24 and lines 35-36; page 43 lines 27-29; page 57 lines 40-43; page 58 lines 7-27; page 82 lines 1-35) During this entire tour of duty Assistant Trainmaster James Spencer was with the crew. Unfortunately, ATM Spencer had selective memory loss when being questioned by Local Chairman Barse, which is very evident in this transcript.

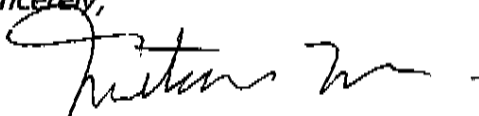
The organization contends and TM Steigmeyer agreed on page 65 lines 19-23, that because of not having a lantern that worked and being very late at night, claimant could never actually see what he injured his left knee on but thought it was a placard holder around the middle of railcar CSXT 259456. ATM Spencer knew he did not have a properly working lantern, but still instructed the claimant to pick up the cars at the LaPorte County Co-op at Wellsboro, IN elevator. After the

claimant was dismissed from the ER at Dekalb Memorial Hospital in Auburn, IN after being given Vicodin Extra Strength around 0430 hours on February 26, 2003, he was required to return to the Garrett Depot. Upon returning, he was instructed to fill out Form PI-1A, even though the carrier knew he was under the medication of Vicodin and had been up almost 22-24 hours. (see page 13 lines 5-9 and page 58 lines 40-43 and page 59 lines 2-6) The carrier is holding claimant responsible for erroneously writing on the P1-1A that he was injured on a placard that was bent. Please note that on Exhibit #3, before claimant was given Vicodin Extra Strength, claimant had told the attending physician Niccum in the ER that he had hit his left knee on a metal placard. Please also note on page 36 lines 2-3 where ATM Spencer states that claimant only stated: "he hit his knee on something, he wasn't sure, to me [ATM Spencer] he wasn't specific". (Also see page 43 lines 3-4) It was only after taking the Vicodin Extra Strength and being very tired that he wrote down that the placard was bent.

The carrier has shown the organizations once again, that they are going to do anything and everything to eliminate injuries and not show them as FRA reportable. As of this date, the carrier still has not shown this as a FRA reportable injury, even though they had first hand knowledge that claimant was prescribed a prescription drug in the ER named Vicodin Extra Strength. (page 58 lines 40-43 and page 59 lines 2-6). Even in the investigation proceedings on page 83 lines 40-42 and page 84 lines 1-39, Manager of Safety for the Chicago Division MA Benham stated for the record that the claimant's on-duty injury had not been a FRA reportable. Claimant lost time until the carrier placed him on administrative leave until they dismissed him on March 25, 2003. On the Chicago Division at least, they do not care about their injured employee's rights under due process of his contractual binding agreements, their own policies and FRA Regulations, when it comes to a FRA reportable injury which is very apparent in this case. Chicago Division General Manager Tuckek while in the Garrett Depot on April 02, 2002 at 1945 hours, made the statement to Local Chairman Barse very unmistakably, that as long as the employee is dismissed, the carrier does not have to report the on-duty injury. I only hope for the sake of our membership, that the practice that the Chicago Division has recently embraced in will be found out by the FRA and those that can change the minds within CSX that are hiding on-duty injuries and are punishing employees that are in fact injured in anyway. The Claimant did not want to get injured, but unfortunately for him on this date, he did and he did it while he was on duty.

In view of the aforementioned facts, this committee would appreciate your approval of this claim and return this claimant to service immediately.

*Sincerely,*



Mitchell Barse  
BLE LC Division 153  
Garrett, IN

cc: SC Mavity - UTU LC 298



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

Region IV

200 West Adams Street  
Suite 310  
Chicago, IL 60606

August 5, 2003

RG4-030506-001161

Mr. Michael Barse  
Legislative Chairman  
Brotherhood of Locomotive Engineers  
5783 County Road 427  
Auburn, Indiana 46706-9566

Dear Mr. Barse:

This will serve to respond to your letter of April 26, 2003, in which you alleged the CSXT Corporation (CSX) failed to report a personal injury to the Federal Railroad Administration (FRA) as required by Federal regulations. The alleged injury occurred at Union Mills (Wellsboro) Indiana on February 25, 2003. The FRA has conducted an investigation into this matter and has determined that a violation of 49 CFR, Part 225 did occur as alleged in your letter. Furthermore, FRA determined that CSXT was also in violation of 49 CFR Part 225.33 in that several corporate officials were engaged in actions designed to prevent the employee from reporting the injury or receiving prompt medical treatment.

The investigation established the employee was injured while performing duty for CSXT while a member of G09423 train crew at Union Mills, Indiana on February 25, 2003. The employee injured a knee while crossing over a rail car. The injury was reported to a company officer, a trainmaster, with the request the employee be given medical treatment for an injured knee, which was now swelling rapidly. In response to this request, the trainmaster ordered the employee to sit in the yard office at Garrett, Indiana while he made some telephone calls. The employee was kept in this status for over one and one-half hours until the employee insisted on being taken to a hospital for treatment. The trainmaster relented and drove the employee to the hospital for the requested treatment.

At the hospital, the employee was met by a senior carrier official who discussed the reportability of the injury and that if the employee declined to take a prescription for the injury, an unnamed benefit from the railroad would be given<sup>1</sup>. The employee complied with this request and declined the prescription from the treating physician. The railroad proceeded to consider this injury to be non-reportable and failed to follow Federal regulations for reporting injuries.

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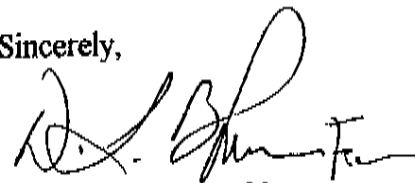
<sup>1</sup>At the hospital, the carrier official stated that the employee "would be taken care of" if the employee declined to accept treatment.

The discussion of potential "reportability" of injuries by railroad officials with possibly injured employees is considered to be behavior that is calculated or designed to prevent an employee from reporting an injury to the railroad or to prevent or delay proper medical treatment for the injury. In this case, the employee did report the injury to the railroad as required by railroad rules. However, the actions by the carrier officer did occur and therefore violated the provisions of the Federal regulations governing intent to harass and intimidate. Furthermore, delays caused by requiring an injured employee to wait for an excessive period of time before providing treatment is also considered to be actions designed or calculated to discourage or prevent proper medical treatment of an injury.

As a result of this investigation, FRA will recommend to the Office of Chief Counsel that civil penalties be assessed against CSXT for failure to report an injury to FRA as required by Federal regulations and for failing to comply with the policy of anti-harassment and intimidation as specified in the railroad's Internal Control Plan (ICP - a.k.a CSX's Anti Harassment Policy).

I hope that this information will be useful for you and your constituents. If I may be of further assistance, please feel free to contact me at (312) 353-6203.

Sincerely,



Laurence H. Hasvold  
Regional Administrator