Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12228
SECOND DIVISION Docket No. 11999
92-2-90-2-116

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Southern Railway Company

STATEMENT OF CLAIM:

1. Please let it be known that on April 21, 1989 the Southern Railway Company violated the terms, conditions and provisions of the current controlling Agreement dated March 1, 1975, as amended. We will show that Rules 34, 49, 59 and 60 of the Agreement were violated in the series of events that led to Painter being assessed a three (3) day suspension which began on May 31, 1989. This unauthorized suspension was the direct result of the alleged charge of violation of two parts of NS Safety and General Conduct Rule 1000, which was issued at a preliminary investigation that was held on April 21, 1989. We will show without a shadow of a doubt that Painter Byrd was in fact in complete compliance with both this Rule and the controlling rules of the Agreement. This will be shown by the undisputable facts which were presented at the formal investigation.

2. That accordingly, the Southern Railway Company now be ordered to provide the following relief for Painter W. E. Byrd: that he now be paid for three (3) days pay, eight (8) hours each day at the current Painter's rate in effect on May 31, 1989. Also, that he be compensated for any and all overtime that he may have lost due to this unauthorized suspension. And finally, that he be made completely whole for any other benefits that he may have lost.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was suspended for three days for failure to report an injury in a timely fashion. On December 7, 1988, Claimant fell off a scaffold. This fact was reported to his supervisor, who appeared on the scene. Claimant said he was not hurt but he felt rattled or addled when he fell backwards. No accident report was filed. Thereafter, his back began hurting which had never happened before. On April 13, 1989, Claimant went to the hospital emergency room for treatment. While he was there his wife called the Chief Clerk to report Claimant sick. That call was reported to his supervisor. Claimant was never given his supervisor's telephone number to call. On April 19, 1989, Claimant signed an accident report which indicated that he had first received treatment for back strain on April 13, 1989. Between December and April he never reported any injury to his supervisor. Claimant indicated that he has never been injured on the job before and has never seen anyone else injured.

Norfolk Southern General Safety Rule 1000 states:

> "An employee who sustains a personal injury while on duty must report it, before leaving Company premises, to his immediate supervisor or to the employee in charge of the work, who will promptly report the facts through channels.
>
> If an employee at any time marks off or obtains medical attention for an on-duty injury or occupational illness, he must promptly notify his supervisor."

It is uncontested that Claimant's supervisors knew he fell approximately six feet to the ground from a scaffold. They did not file an accident report because Claimant said he was not injured, although they should have known of the possibility of injury. They did replace the scaffold with a more permanent type of scaffold. After several months, Claimant noticed back problems. When he finally sought medical treatment, he notified the Carrier in the normal manner for reporting absence from work for illness. He did not call his immediate supervisor at that time. When he returned to work, an accident report was filled out.

This Carrier, like all Carriers, has the right to have work-related injuries reported at the earliest possible time since the Carrier may be liable for medical expenses at a minimum. Carriers have generally rigidly enforced rules regarding the reporting of injuries and have often attempted to discharge employees for a reporting failure.

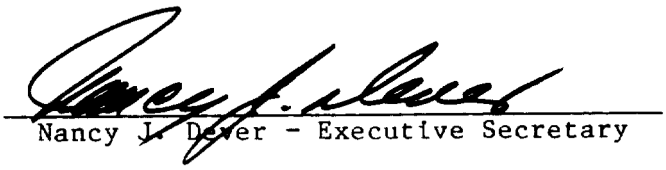
It should be noted that prior to this incident Claimant had a perfect safety record. He also was unwilling on an earlier occasion to claim job-related injury for an injury which was not job-related.

A three-day suspension for failure to file an injury report is most unusual. Either Claimant violated Rule 1000 or he did not. It is clear that both of Claimant's supervisors knew of his fall from the scaffolding and neither attempted to follow up to see if Claimant sustained a latent injury. Unfortunately he did, and when that latent injury appeared, Claimant had his wife call the Chief Clerk, which is the normal way to report an absence. When he was able to return to work, he filed the accident report. While he did not follow the literal wording of Rule 1000, he had his wife call the Chief Clerk's office and the information was promptly relayed to his supervisor. Clearly, the purpose of the Rule was met. The Carrier's finding that Claimant violated Rule 1000 must be overturned. All record of the discipline will be expunged from Claimant's record and he will be made whole for lost wages and other benefits.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT Board
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1992.