

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13021
Docket No. 12939
96-2-94-2-92

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
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(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the 'Carrier') violated Rule 40 of the Controlling Agreement, Form 2640-Std., between the Atchison, Topeka and Santa Fe Railway Company and its employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the 'Organization') when they unjustly issued a 90 day deferred suspension to Silsbee, Texas Machinist Matthew Gill, Jr. (hereinafter referred to as the 'Claimant') for an alleged violation of certain Safety and General Rules in connection with an on-the-job injury.

Accordingly, we request that the Claimant be exonerated in this matter and that his personal record be expunged of all references to his alleged rule violations. Furthermore, if this suspension resulted in any loss of wages or other benefits to the Claimant, that he be made whole for such loss."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, being the only Machinist at this outlying point, is assigned to work from 6:00 PM to 2:20 AM. On or about 6:20 PM on July 27, 1993, Claimant experienced pain in the right groin area while climbing up into an engine.

At 6:30 PM, Claimant notified his Supervisor, who immediately came to the workplace to check on the injury.

Claimant did not, at that instance, believe he needed medical attention, and after conversing with his Supervisor about the incident, the Supervisor completed a minor injury report in the presence of Claimant, recording the facts as allegedly relayed to him by the Claimant.

On August 6, 1993, it was thought by a physician that Claimant may have suffered a minor hernia. After surgery it was determined that no hernia occurred, and the pain was attributed to a pulled muscle. On August 6, 1993, Claimant completed a "Report of Injured Person."

It is the slight discrepancy between the report filled out by Claimant's Supervisor and Claimant's report that has formed the basis for the charges and the discipline.

The Supervisor's report indicated that Claimant sustained the injury when he was "applying hand brake to various locomotives." Claimant's report indicated that he suffered the injury "after climbing on the third locomotive at the end of the stair way I felt a pain in my groin."

During the Investigation, Claimant's Supervisor testified that what is on the minor injury report is what was related to him by the Claimant. Claimant, on the other hand, insisted that he did not tell the Supervisor he had suffered the injury while setting a handbrake, but he did say, in searching for a cause, that perhaps the setting of handbrakes contributed to the pain.

Following is a colloquy between the Interrogating Officer and the Claimant.

"Q. What type of hand brake were you setting that caused your pain?

A. It wasn't the hand brake that caused my pain. The stepping, pulling up on the unit is where I got my pain. I don't know where that come from but I didn't tell him that.

Q. There was no?

A. It wasn't no hand brake involved.

- Q. Hand brake you never told mentioned that setting hand brakes that you thought caused it?
- A. No, No, I told him that I thought lead to this when we were doing the discussion I didn't say hand brake, didn't.
- Q. Well, but you are saying that the hand brakes caused this?
- A. No. I say what lead to it, you know walking you know everything else that lead up to this so I figure cause I climbed up on the locomotive and this is where the pain come from."

It is the opinion of this Board that this entire dispute involves a matter of semantics with Claimant honestly searching for an incident or occasion which led up to the moment the injury occurred and his Supervisor misconstruing Claimant's estimate of what led up to the injury as the actual cause of the injury.

The Carrier has not established Claimant's culpability. The claim will be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.