

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13559

Docket No. 13435

00-2-99-2-34

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“That the Kansas City Southern Railway Company (hereafter referred to as the “Carrier”) violated Rule 29 of the Controlling Agreement, effective April 1, 1980, as amended, between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) and wrongfully and unjustly issued a Letter of Reprimand to Kansas City Joint Agency Machinist Jeffery L. Schulze (hereinafter referred to as the “Claimant”) cited in violation of Carrier Rules 1.2.5 and 50.4 for allegedly failing to file a personal injury report.

Accordingly, we request that for this violation, that the letter of reprimand and all reference thereto, be removed from the Claimant’s Personal Record.”

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 were given due notice of hearing thereon.

By letter dated February 23, 1998, the Claimant was directed to report for an Investigation on February 26, 1998, concerning his alleged failure to file an injury report before leaving his tour of duty on February 21, 1998, in violation of Rules 1.2.5 and 50.4. The Hearing was postponed to and held on March 2, 1998. By letter dated March 26, 1998, the Carrier advised the Claimant that he had been found guilty of the charge and assessed a letter of reprimand.

It appears from the record that on February 21, 1998, the Claimant was involved in an incident where an oil hose struck his forearm. The Claimant did not file an injury report that day. The following day, the Claimant mentioned the incident to his Foreman who, in turn, advised the Mechanical Supervisor. The Mechanical Supervisor had the Claimant fill out an injury report.

The Organization contends that the Claimant was not required to complete an injury report because he was not injured. The Organization maintains that the Claimant merely experienced the normal bumps and bruises that are part of the job. The Carrier argues, however, that the Claimant was injured and was required to report the injury before he left the property on the day of the incident, regardless of how minor it may have appeared to the Claimant to be. The Carrier observes that as a result of the report completed the following day, it took remedial action to guard against a reoccurrence of the incident.

The critical issue on which the claim turns is whether, as a matter of fact, the Claimant was injured on February 21, 1998. If he was injured, there is no question that he was required to report the injury before leaving the property that day, even though he considered the injury to be minor and even though the injury did not require medical attention. As an appellate body, the Board does not find facts de novo. Our role is restricted to reviewing the record developed on the property to determine whether the findings made on the property are supported by substantial evidence.

On cross-examination, the Mechanical Supervisor was asked whether the Claimant "at any time reference[d] it [the incident with the hose] as a [sic] incident of injury?" The Mechanical Supervisor replied, "Yes, to my knowledge he did. He said he had a personal injury happen to him Saturday, and we explained, we talked about

how it happened.” In contrast, the Claimant denied telling the Mechanical Supervisor, or anyone else, that he had an injury on Saturday, February 21, 1998.

As an appellate body, we have not seen the witnesses testify and are unable to assess their credibility. We defer to the credibility determinations made on the property. We see no reason to depart from this approach in the instant case. We defer to the decision made on the property to credit the testimony of the Mechanical Supervisor and find that the determination that the Claimant did, in fact, suffer an injury on February 21, 1998, is supported by substantial evidence.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 27th day of October, 2000.