

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13670

Docket No. 13538

02-2-00-2-15

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Delaware & Hudson Railway Company violated the terms of our current agreement, in particular Rule 26.1 when they administered discipline of forty (40) demerits to John J. Hammond as a result of an investigation held on March 8, 1999.
2. That accordingly, the Delaware & Hudson Railway Company be ordered to remove the record of discipline and all related correspondence from the record and file of Carman John J. Hammond.”

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.

Following an investigative Hearing, the Claimant was assessed 40 demerits for violation of Rules as follows:

“Failure to comply with NORAC Rules R and T of the General Rules . . . and Rules 1.1, 1.5a, 1.11 and 4.1 of the D & H Employee Safety Code and Policy . . . which resulted in a personal injury on November 25, 1998 and failure to report same, at the D & H Binghamton Yard Facility, while performing your duties as a Carman.”

The cited Rules may be summarized as follows:

“R. Injuries on Railroad Property

A report of [an injury on railroad property] must be made promptly to the designated office, followed by a full written report on the prescribed form. . . .

T. Reporting for Duty; On Call

... Employees must not absent themselves from duty or leave their assignment or engage a substitute to perform their duties without permission of a designated officer.

1.1 Protect yourself, your fellow employees and the public by observing all safety rules and procedures.

1.5 a. Conduct your work in an orderly and safe manner.

1.11 Practice safety in everything you do.

4.1 Ensure that safety is the first consideration on all jobs.”

The Organization summarizes the incident here under review as follows:

“On November 25, 1998 at approximately 5:00 P.M., the claimant, while changing a brake shoe on a freight car in the East Binghamton, NY Yard, felt a momentary pain in his knee. He continued to work the remainder of

his shift, approximately seven (7) hours, without complaint or any further discomfort. When the pain increased in the following days, to the point that it was a readily identifiable injury, he promptly notified the carrier.”

The Carrier does not take exception to this account except, most significantly, the use of the word, “promptly.” The Carrier argues that Rule R required the Claimant to report his “injury” on the date it occurred, Wednesday, November 25, 1998. The Claimant was off duty on November 26 - 28 and was scheduled to return to duty on November 29. Prior to reporting, he contacted his Supervisor, advising of his discomfort, and was provided with medical attention. He did not return to work until February 10, 1999.

The Board concludes that the Claimant failed to comply with Rule R in that the knee pain he experienced should have led him to report such at the time it occurred. No substantive violation of Rule T is found, in that he did not “absent [himself] from duty,” because he did advise his Supervisor by telephone and did report for duty as scheduled.

The other cited Rules concern the following of safe practices while at work. The record of the investigative Hearing does not disclose any proven violation of these Rules, nor do the charges against the Claimant give any indication of the possible nature of such alleged violation.

The Organization protests the severity of the 40-demerit disciplinary action, noting that 60 demerits may result in dismissal from service. Because the Board concludes that the Claimant made a judgment error in not recognizing that his November 25 injury might have serious physical consequences (as was indeed the case) and because the Carrier is fully entitled to be alerted to such circumstances, some corrective disciplinary action is warranted. Awards cited by the Carrier in support of its action each involved falsification, dishonesty, or an issue of an employee’s lack of credibility. None of these offenses was shown to be applicable here. In addition, there is lack of proof of violation of most of the Rules cited in the charges.

As a result the Board finds the penalty to be unreasonably harsh. The Award will reduce the penalty to ten demerits.

As a procedural objection, the Organization protested the absence of the Charging Officer at the Hearing. The Board finds this without substance, as discussed in Second Division Award 13672.

AWARD

Claim sustained in accordance with the Findings.

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 11th day of February, 2002.