

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13808
Docket No. 13695
04-2-03-2-40

The Second Division consisted of the regular members and in addition Referee Carmelo R. Gianino when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company)

STATEMENT OF CLAIM:

- “1. That the Kansas City Southern Railway Company violated the controlling Agreement, particularly but not limited to Rules 38 and 29, when Shreveport, Louisiana Electrician C. K. McCormick was unjustly and arbitrarily assessed a twenty (20) day suspension from service from the Kansas City Railway Company following investigation held on June 26, 2002.
2. That, accordingly, the Kansas City Southern Railway Company make whole Electrician McCormick as follows:
 - a. Compensate him for all wages lost at the prevailing rate of pay of electricians and all applicable overtime with interest at the judicial rate;
 - b. Make him whole for any qualifying days towards vacation rights;
 - c. Make him whole for any loss of health and welfare, and insurance benefits;
 - d. Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
 - e. Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;
 - f. Any record of the arbitrary and unjust disciplinary action be expunged from his 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.

At approximately 4:00 A.M. or half-way into his 12:00 A.M. to 8:00 A.M. shift on June 6, 2002, the Claimant, while walking under a ramp, inadvertently hit his hard hat on an unmarked pipe, snapping his head back. No mention was made of this alleged on duty. The employee went home after completing his shift and did not report the injury until more than two hours into his next tour of duty - some 22 hours later - on June 7, 2002.

By letter dated June 13, 2002, the Claimant was instructed to attend an investigative Hearing on June 26, 2002 for the purpose of determining whether culpability existed for his alleged failure to timely notify supervision of his injury. By letter of July 12, 2002, the Claimant was advised that the charges were sustained and was assessed a 20 day suspension without pay. This decision was properly appealed on the property and is now before the Board.

The Organization, in the Claimant's defense, asserts that the Investigation was not fair and impartial. It states that the charges were not specific enough to allow the Organization to prepare an adequate defense. Further, the Hearing Officer assumed multiple roles and thereby tainted the process. It cites violation of Rule 29 which reads as follows:

"No employee shall be disciplined without a fair hearing by the Carrier. Suspension in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employee or his fellow employees), pending a hearing, which shall be

prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The Board does not agree with this argument. While, specificity is better than vagueness or generality the charging letter is specific enough to allow the Claimant and his representative(s) to formulate a defense. It should not have confused him and did not disadvantage him in any way. The Claimant never said that he did not understand the nature of the charges; nor did he request a postponement.

The Organization also complains of the many roles played by the Hearing Officer. He not only presided over the Hearing, but also served as judge, witness, and jury, it asserts. The panel finds that he was not a witness, as the Organization contends, but simply introduced Rule language through witness testimony. Often, a single individual, for operational or other considerations, performs more than one non-conflicting role within the scope of a Hearing, and this same individual can maintain fairness and impartiality. To have an authorized individual function as Hearing Officer, determine the merits of a case, and issue a penalty is not without substantial precedent. The Board sees no flaw in this regard in the instant claim.

The Organization further argues that the Rules the Claimant is said to have violated, namely Rules 1.1.3 and 1.2.5, as well as 1-h of the Safety Through Awareness and Responsibility Guide, are compromised by the language contained in Rule 38. These Rules read as follows:

- "1.1.3** Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.

- 1.2.5 All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. The injured employee must also complete the prescribed form before returning to service.

- 1-h Oral and written reports of accidents and injuries are made to the supervisor or employee in charge as soon as possible but no later than the end of shift.

- 38 (a) Employees injured while at work are required to make a detailed written report of the circumstances of the accident just as soon as they are able to do so after receiving medical attention. Proper medical attention shall be given at the earliest possible moment.

(b) Employees shall be permitted to return to work just as soon as they are able to do so without signing a release, pending final settlement of the case, provided however, that such injured employees remaining away from work after recovery shall not be held to be entitled to compensation for wage loss after they are able to return to work. All claims for personal injuries shall be handled with the Personal Injury Claim Department."

Rule 38 clearly deals with employees who are injured and require medical attention. Under this set of circumstances, logic prevails, and the employee is given appropriate time to fulfill his/her obligations. The Claimant's situation was different. He did not require medical attention and was obligated to comply with the aforementioned rules (1.1.3, 1.2.5, STAR 1-h).

The need to report injuries immediately is a requirement the Carrier has instituted in order to protect itself its employees and patrons. It is important that the

Carrier be able to quickly respond to an injury, no matter how slight, or correct an unsafe condition as rapidly as possible.

The Organization lastly argues that the Claimant did not intentionally or maliciously violate the Rules. The Claimant was not said to have intentionally or maliciously violated Carrier Rules. He simply violated them. The analogy is made to an individual who violates a company's Time and Attendance Policy. The veracity of the reasons given for an absence are not necessarily questioned; it is the number of absence occasions which are in excess of company standards that are the subject for investigation and possible discipline.

It is appropriate to comment on the Organization's assertion regarding the introduction of the Claimant's prior record even though the Hearing Officer never mentioned it in consideration of the discipline levied, and the Carrier also did not mention it until the final denial on the property. Prior record, it is known, is utilized to assess an employees past worth and assess an appropriate level of discipline. The fact that the Claimant's record was introduced later in the process is not problematic.

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 16th day of September 2004.