

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13967
Docket No. 13857
08-2-NRAB-00002-080010**

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

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when they arbitrarily assessed the record of Carman Neil Leveille with a ten (10) day suspension as a result of an investigation held on October 19, 2006 at East Deerfield, MA.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Neil Leveille in the amount of ten (10) days pay at the straight time rate. This is the amount he would have earned had the Carrier not violated our Agreement.**

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.

On September 22, 2006, Carrier notified Claimant to appear for a formal Investigation on October 11, 2006 which was postponed and subsequently held on October 19, 2006 concerning the following charge:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident outlined below:

Violation of Rule GR-D which states:

GR-D. Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

On September 16, 2006 within one and one-half hours after you returned to work following a 12 hour rest break, you allegedly suffered an injury while performing your work at the West Deerfield, Massachusetts derailment site.

Specifics to be reviewed and discussed at subject hearing investigation. Additionally, your service record will be reviewed at this investigation hearing.”

On November 13, 2006, Claimant was notified that he had been found guilty as charged and was assessed a ten day suspension without pay.

It is the Organization’s position that the facts indicate that Claimant hurt himself on the job on September 15, 2006, while working which he reported to Supervisor Parsons. Claimant did not believe it was too serious and he continued to work without making out a formal injury report. On September 16th after working on the job for about one and half hours while lifting a tie he fell to the ground complaining of pain in the ribs. Claimant did not slip, trip or fall and he exercised care to prevent injury by lifting with his legs and not his back. It concluded by

arguing that the injury was the result of the incident on the 15th which both Claimant and Supervisor did not recognize as being as serious as it was. Claimant exercised due diligence in both instances and the accident was unavoidable and the discipline should be rescinded.

It is the position of the Carrier that Claimant did not notify anyone of an alleged injury on September 15th, nor did he tell anyone on September 16th that he was not capable of carrying ties. Supervisor Parsons testified the Claimant did not fill out a report for the 15th nor did he request any assistance or medical attention. Parsons recalled that Claimant worked the entire September 15, 2006 shift and he had no reason to believe that Claimant was injured on that date. Simply stated the Carrier argued that the occurrences of September 15 and 16, 2006, constitute two separate events. The September 15th incident was a non-incident while the 16th was the actual date of injury wherein the Claimant injured himself because he was not working safely and because of that the discipline was appropriate and should not be disturbed.

The Board has been furnished a copy of a RELEASE OF ALL CLAIMS signed by the Claimant and the Carrier that covers the issue in dispute and releases the Carrier of any further liability after having paid the Claimant \$1,838.00. Therefore, the Board finds and holds that the merits of this dispute do not need to be further examined as the issue has become moot, thus the claim must be dismissed.

AWARD

Claim dismissed.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.