

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

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Boilermakers)  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Boilermaker C. Z. Costilla was unjustly dealt with when on date of November 8, 1977, the Carrier assessed a five (5) day record suspension to be placed in his personal record.
2. That, accordingly, the Carrier be ordered to remove such discipline 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 waived right of appearance at hearing thereon.

On November 8, 1977, the Carrier notified Claimant that, as a result of an investigation held October 4, 1977, he had been assessed a five day record suspension for "failure to promptly notify the company of his injury on September 15, 1977 in accordance with General Rules 2 and 4." The Burlington Northern Safety Rules Book, form 15001, Rules 2 and 4 provide in pertinent part as follows:

- "(2) An employee having any knowledge or information concerning an injury before his tour of duty ends (or as soon thereafter as possible), must complete a personal injury report."
- "(4) Injury of any kind, however minor, must be promptly reported."

Claimant was employed as a boilermaker at Carrier's West Burlington Shops on September 15, 1977. While on duty that day, he was welding brackets on a locomotive unit at about 8:30 p.m. In the course of his work, he raised up and hit his head on a hand railing. He did not fill out a personal injury report on

that day, nor did he report the accident to his foreman or any other Carrier officer. On September 20, 1977, Claimant began suffering from headaches and dizziness. He went to a medical center for treatment and x-rays on September 25, 1977. On September 26, 1977, the medical center, in an attempt to locate Claimant and advise him that the x-rays revealed a skull fracture, telephoned the Carrier. The information was conveyed to the Claimant when he reported for work and he then filed a personal injury report.

Claimant was hospitalized for five days, released, and then returned to the hospital after two days when his condition worsened. He was finally released from the hospital on October 11, 1977. He returned to work on March 20, 1978.

On September 30, 1977, Claimant was notified to appear for an investigation to be held October 14, 1977, concerning his alleged failure to promptly report the injury. Claimant acknowledged receipt of this notice by signing it but did not appear at the investigation, which was conducted as scheduled on October 14, 1977. Claimant was represented by a Local Chairman of the Organization.

In its claim for removal of the five day record suspension, the Organization first raised a procedural issue, challenging the manner in which the investigation was conducted. The Organization's argument was twofold. It contended that a fair and impartial investigation was not held because: (1) the Carrier conducted the investigation knowing that Claimant was out of town and under the care of his personal physician; and (2) the hearing officer, who notified Claimant of the investigation, conducted the investigation and administered the discipline, had decided, prior to the investigation, that Claimant was guilty of the charges against him.

Both contentions are without merit. It was the Claimant's responsibility to request a postponement if he wanted to be present and was unable to attend the investigation on October 14, 1977. Claimant acknowledged receipt of the notice of the investigation and neither he nor his representative requested a postponement. Further, at the close of the investigation, Claimant's representative stated that the investigation had been fair and impartial and conducted in accordance with the provisions of the controlling agreement. The multiplicity of the hearing officer's role, which included preferring charges, conducting the investigation and administering discipline, was also not in violation of Claimant's Agreement rights. Nothing in the Controlling Agreement forbade such a practice and, once again, the Claimant's own representative admitted that the investigation had been fair.

In response to the charge that Claimant failed to promptly report the injury he sustained on September 15, 1977, the Organization asserted that Claimant did not realize that he was "injured" until September 26, 1977, when the medical center informed him that his skull had been fractured. The Organization put forth that Claimant, after hitting his head on the hand rail, did not believe that he was "injured" because there was no laceration or swelling on his head.

The language of Rule 4 is clear and unambiguous: "Injury of any kind, however minor, must be promptly reported." While Claimant undoubtedly did not realize on September 15, 1977 that he had fractured his skull, he most certainly knew that he had been injured. He, therefore, had an obligation to report the injury.

In light of the foregoing, the discipline assessed by the Carrier cannot be viewed as unjust, arbitrary or capricious. Although the suspension will go on Claimant's record, Claimant did not suffer any wage loss, since he was not withheld from service.

The Agreement was not violated.

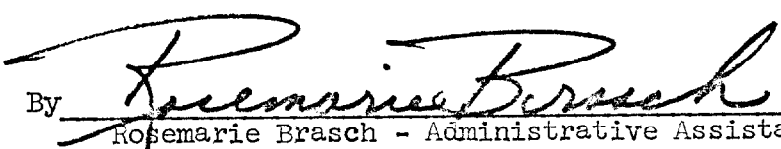
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of March, 1980.