

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10621
Docket No. 10755
2-SSR-MA-'85

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (
(Seaboard System Railroad (L&N)

Dispute: Claim of Employees:

1. That under the current agreement, Machinist J. E. Fox was improperly suspended from service five (5) days without pay as result of an unfair investigation conducted July 2, 1982.

2. That, accordingly, the Carrier be ordered to reimburse Machinist J. E. Fox for all time lost as a result of his improper suspension, and that all reference to the discipline issued be removed from Mr. Fox's 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 employe or employees involved in this dispute are respectively carrier and employes 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.

While on duty as a machinist on June 20, 1982, the Claimant was engaged in loosening a bolted nut on a diesel locomotive tank. Initially he tried to loosen the nut with an impacter and having failed, secured a henge handle and socket wrench.

When loosening the nut with the socket wrench, he felt a pull in his chest or back - something like a muscle spasm. This was about 5:00 PM. He said that a little later the pain from the episode went away. He finished his shift at 11:00 PM.

The next morning, June 21, he reported that pain was experienced on awakening at about 11:00 AM and at 11:20 AM called the General Foreman and reported the matter by telephone. He made no report of the pulled muscle to his Foreman during the time he was on duty.

He was subsequently charged with violation of Safety Rule E which reads in pertinent part:

"An employee suffering an injury on duty, regardless of the nature of the injury or the time it occurs, must report it immediately. Failure to do so will subject the employee to discipline..."

During the testimony at the accorded hearing, the Claimant contended that he complied with the Rule. He said he reported the injury on June 21 immediately after he realized that he had been hurt.

On the same date, June 21, at a time not precisely clear, he reported to a doctor and the latter's report of July 1, 1982 was entered into the record by his representative.

Both parties to this dispute cite the Doctor's letter. It reads in full:

"TO WHOM IT MAY CONCERN:

RE: Jerry Fox

"This is a letter of current medical review requested by Jerry Fox concerning a L. & N. accident reported by Mr. Fox recently. Patients initial report notes was first seen by me on the 21st of June with a history of a day prior to being seen of experiencing a pulled sensation in his chest while loosening some bolts. At the time of examination patient was noted to have some soreness along the sternum at the thoracic level of T-6 also soreness along the vertebrae at the same level. It was thought at that time that the patient had a costochondral strain and he was placed on muscle relaxer and antinflammatory medication, pain medication and given instructions of being unable to use the upper body and arms for one week. This musculoskeletal problem was thought to be temporary.

"Mr. Fox was inquiring about the significance of time element. It is of significance to note that probably the musculoskeletal pain did increase from the time of the stated injury and until time of being seen. Patient alleges that he did experience some discomfort the day before when loosening the bolts but did not think it

significant until the day of being seen, which was the next day, before coming in. As for the possibility of increasing discomfort, it is possible for the musculoskeletal soreness to have increased from the day of injury until the next day which was the day the patient was evaluated."

A careful reading of the doctor's letter clearly indentifies the occurrence on June 20, 1982 as an injury; i.e.:

"...pain did increase from the time of the stated injury..." (third and fourth lines of the last paragraph quoted above)

And, again as stated in the last three lines of the last paragraph quoted above:

"...it is possible for the ... soreness to have increased from the day of the injury..."

While it is not clear as to which party, the Organization or the Carrier, the Doctor author of the letter of July 1 was speaking for - the Claimant's representative introduced it at the hearing as a Doctor for the Carrier and the Carrier identifies it as the Claimant's Doctor, we do know that the Doctor called the episode on June 20, 1982 an injury.

Our task here is not, however, to judge injury (the Doctor has already done that) but rather to determine whether the reporting Rule was violated. The Doctor stated that probably the pain did increase from the time of the stated injury and until the time of being seen. Rule E does not require an increase in pain initially.

The hearing record establishes the fact that the Claimant did not report the injury until the day after. All injuries are to be reported immediately. Second Division Award 9057. Second Division Award 9232 on this Carrier (L & N and Carmen) denied a similar Claim involving the reporting requirement of Rule E.

The Organization has charged that:

1. The Claimant was discriminated against because of the Carrier's method of treating him in relation to its treatment of others in like circumstances.

2. The Carrier's disciplinary action against the Claimant was without meeting the required burden of proof, and
3. The Hearing Officer attempted to limit pertinent information showing the Carrier's discriminatory action and denying the Claimant his due process.

We are aware of the series of objections from both the Hearing Officer and the Claimant's representative during the hearing process. The basis for those objections and charges has been thoroughly reviewed and seriously considered. We do not find that any of the Claimant's rights in the hearing were materially abridged to the extent that would warrant setting aside the discipline assessed.

Moreover, we do not find that the Claimant was singled out to be the recipient of discipline when others in similar circumstances may not have been disciplined. We need only to refer to Award 9232 a second time in this Findings to demonstrate that at least one other employee on the L & N was disciplined for failure to immediately report an injury. There a thirty-day suspension was assessed. Here a five-day suspension was assessed.

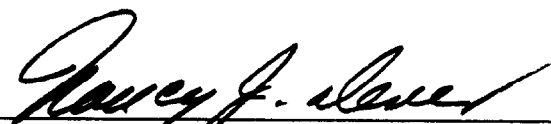
We find that the Carrier's decision to discipline the Claimant in this instance was based on substantial evidence adduced at the hearing. We will not reverse the Carrier's decision. The Claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985