

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13155

Docket No. 13028

97-2-95-2-57

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**

PARTIES TO DISPUTE: (

**(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

- "1. That, in violation of the current agreement, CSXT (former Baltimore & Ohio Railway Company) arbitrarily disciplined Machinist P. Hutchinson by unjustly assessing a ten (10) day actual suspension. The suspension was effective June 7, 1994.**
- 2. That, accordingly, CSXT be ordered to compensate Machinist P. Hutchinson ten (10) days pay at the pro-rata rate of pay and that his record be cleared immediately."**

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.

The basic facts of the instant case are not in dispute. On March 26, 1994, Claimant was working an additional four hours (11:00 A.M. - 3:00 P.M.) before beginning his regular 3:00 P.M. to 11:00 P.M. shift. At approximately 1:00 P.M., Claimant was lifting a knuckle from a company truck onto an engine and experienced a sudden pain in his left groin area. Claimant completed his shift, and returned to work the following day on his regularly assigned 11:00 P.M. - 7:00 A.M. shift the following day (Sunday, March 27, 1994). At approximately 6:50 A.M., on Monday, March 28, 1994 Claimant reported his pain to his General Foreman. He subsequently received medical attention.

On April 18, 1994, Claimant was notified to appear for a formal Investigation into his alleged failure to report the injury in a timely manner. Following the Investigation, Claimant was assessed a ten day suspension.

At the crux of this case is Rule 40 of the Carrier's safety manual. That Rule reads as follows:

"An employee, if physically able to do so, must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while on duty or on Company property. Upon receipt of such report, the employee in charge or the supervisor must make a prompt written report of the injury on the prescribed form; or if the injured employee is unable to do so, the required report must be furnished by the supervisor or by the employee in charge."

The Carrier maintains that the Claimant's admitted delay is sufficient to sustain a finding against him. Furthermore, the Carrier notes that, because Claimant often occupies the position of Lead Machinist, it is not unreasonable that he be held to a high standard regarding safety rules and regulations. It is the position of the Organization that: 1) Claimant did not realize the seriousness of his injury until the day he reported it; and 2) Carrier has numerous safety incentive programs in place to deter employees from reporting minor work-related injuries.

A review of the transcript confirms the Organization's argument that the Carrier has numerous safety incentive programs. Nevertheless, the existence of those programs

does not necessarily imply that employees were under pressure not to report any but serious injuries. By Claimant's own admission he felt the pain becoming worse between the time he left the property on March 27 and the time he returned to work the night shift that evening at 11:00 P.M. In light of that, at a minimum, Claimant should have reported his injury before beginning the latter shift. It is apparent that working that shift aggravated an already worsening injury. While his initial self-diagnosis that it would clear up in a couple of days "like a bruise on your hand or a headache or something that would go away" may be understandable, once the seriousness of the injury became more clear, he was obliged to make a report as specified in Rule 40, irrespective of the anticipated negative impact upon his Department's safety record. With respect to the penalty assessed, however, the Board notes that a similarly situated employee (clear discipline record and 16 years seniority), who failed to report an on-duty injury for more than a month received only a written reprimand from the Carrier. (See Second Division Award 13158.) In view of that vast discrepancy, the Board finds that the discipline assessed the Claimant was both arbitrary and excessive. Accordingly, his discipline shall be reduced to a written reprimand.

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 8th day of September 1997.