

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No.13520
Docket No. 13379
00-2-98-2-67**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily suspended Carman Fred Curtis from service for fifteen (15) calendar days as a result of an investigation held on September 3, 1997.
2. That accordingly, the Springfield Terminal Railway Company be ordered to return Carman Fred Curtis to service with compensation in the amount of eight (8) hours pay for each workday he was withheld from service, commencing October 6, 1997 through and including October 20, 1997.”

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 August 21, 1997, the Carrier received notice by way of a "Change of Condition Report" that the Claimant, a painter at Waterville, Maine, had injured his hip on January 30, 1997 after slipping and falling on ice at the entrance to the Waterville Paint Shop. Following a rescheduling, an Investigation Hearing was conducted on September 3, 1997, at the conclusion of which the Claimant was assessed a 15-day suspension for failing to timely report his injury to a Carrier Official in violation of Safety Rule GR-E which provides in part as follows:

"In all cases when a personal or property accident occurs, however slight, the Chief Train Dispatcher must be notified immediately. A written report must follow promptly on the prescribed form . . .

Employees must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rules violations to those authorized to receive such information."

In appealing the Carrier's action, the Organization makes the following arguments. First, the Carrier acted improperly by placing into evidence at the Claimant's Hearing correspondence reflecting issuance of a Safety Training Observation Procedure ("STOP") form in an attempt to establish his guilt. That form, the subject of several prior Awards, has on occasion been held to constitute discipline when it goes beyond mere counseling and accuses a Claimant of a specific Rule violation. By introducing the STOP form here, the Carrier violated the terms of Rule 13 of the Agreement prohibiting discipline without a fair and impartial Hearing.

Second, the Organization argues that a further flaw intruded when the Carrier failed to call Supervisor C. Steinmeyer to stand cross-examination and clarify why the STOP form was issued in the Claimant's case.

Third, on the merits the Carrier has failed to bear its burden of proof. The record is devoid of any direct testimony confirming that the accident occurred on Company property. No eyewitnesses were presented to establish that the Claimant incurred his injury while at work.

The record indicates the STOP form in the instant case was issued on February 20, 1997 by Supervisor Steinmeyer and signed by the Claimant the same day. It cites Safety Rule 12, denotes the letter "F" as code for "Failed/Discussed," and indicates under "Comments" that the Claimant "[d]id not sand the walkway to the paint shop until this manager discussed it with him." It further cites Rule GR-D, again noting "Failed/Discussed" and the comment "[d]id not notify supervisor of unsafe condition." The incidents prompting issuance of that form were related to the Claimant's fall three weeks earlier.

As the Organization correctly points out, such forms have been held to constitute discipline when, as here, they effect discipline without a hearing. The Board concurs with and is bound by those determinations. But if the Claimant believed the STOP form issued to him on February 20, 1997 exceeded counseling and went beyond the Carrier's rights in alleging specific Rule violations without an opportunity to be heard, the appropriate course of action for him was to submit a claim in protest. The issue before us is not whether that form was improperly issued and should be ordered removed from the Claimant's file but whether the Carrier acted arbitrarily in imposing a 15-day suspension on the Claimant for an eight-month delay in reporting his injury.

Taken in context, the Carrier's allusion to the form at the Hearing may have been technically improper but must be viewed as harmless. The 67 page transcript to the Claimant's 4-hour Hearing on the issue of filing a late injury report reveals no reliable evidence of prejudice to the Claimant by reason of receiving the STOP record into evidence. Moreover, the reference occurred in follow-up to a question posed by the Claimant's representative to the Charging Officer, Waterville Locomotive Manager Patterson, concerning the Carrier's procedures in requiring the completion of certain incident reports. That line of examination prompted the Hearing Officer to inquire of the witness concerning the Carrier's procedures in conducting accident investigations. In the course of responding, the witness referenced the use of the STOP form as sometimes issuing in an attempt to prevent any future injuries, and cited as an example the Claimant's incident on February 20, three weeks after his unreported slip on the ice.

With regard to the Organization's argument that failure to call Steinmeyer as a witness deprived the Claimant of a fair Hearing, the Board cannot agree. The record is clear that Steinmeyer had no specific knowledge of or insight into the Claimant's January 30 fall that would have made a material change in outcome.

With respect to the merits, there is no question but that the Claimant's feet slipped out from under him while he was on duty on January 30, 1997. He expressly admits not reporting the incident, and as a result the Carrier was unable to conduct such inquiry as may have enabled it to address any persisting safety problem and prevent further accidents. Although he received treatment for a hip injury on February 11, and was explicitly reminded of his reporting obligations following the February 20 incident, the Carrier's first knowledge of the accident was on either August 18 or August 21 when it received a bill and a description from the Claimant's physician. The Carrier here calls the Board's attention to a number of prior Awards affirming the seriousness of such reporting delays. The Board finds no support in this record for deviating from those consistent reaffirmations of the importance of immediate reporting if employee safety is to be enhanced and the Company's interest protected. See Third Division Awards 19928, 23484, 32756, 32951 and 33382.

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 27th day of July, 2000.