

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13679

Docket No. 13583

02-2-00-2-65

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union:

- 1. That; Montana Rail Link violated the terms of our current Agreement, in particular Article 13 of the Montana Rail Link Agreement, when they arbitrarily and unjustly suspended Laurel, Montana Carman Van Jones from service.**
- 2. That; accordingly, the Montana Rail Link be ordered to compensate Laurel, Montana Carman Van Jones eight (8) hours pay at the pro-rata rate for thirty (30) workdays, commencing January 11, 2000 and continuing through February 19, 2000, that he was withheld from service.**
- 3. That; accordingly, the Montana Rail Link be ordered to:**
 - 1. Return to service with seniority rights unimpaired;**
 - 2. Made whole for all vacation rights;**
 - 3. Made whole for all health, welfare and insurance benefits and doctor expenses for him and his family during the time he was held out of service;**
 - 4. Made whole for pension benefits including railroad retirement and unemployment insurance;**
 - 5. Made whole for any other benefits he would have earned during the time he was held out of service;**

6. Made whole for all wages, overtime he could have worked, lumps sum payments, general wage increases and cost-of-living adjustments;
7. Expunge his personal record of the Letter of Suspension for alleged violation of Montana Rail Link's General Safety Rules #521 a, b, c, 528, 539, 542 a, b, c, 547, 552 and Quality of Work Life Article T placed on his personal record by letter dated January 6, 2000, as a result of the fact finding proceeding held December 10, 1999."

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 Claimant received a 30-day suspension as the result of a fact finding Investigation held on December 10, 1999 for his alleged failure to timely report an on-the-job injury as provided by Carrier Rules. Rule 539 provides in relevant part that "all accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication." Rule 542 states in pertinent part that "an employee having any knowledge or information concerning an accident or injury to himself or others must complete a 'Report of Personal Injury' form before his tour of duty ends supplying information required." In addition, Article T of the Agreement (Quality of Work Life) provides with regard to personal injuries that "employees injured while at work will be required to make and submit to the Company a written report of the circumstances of the accident just as soon as they are able to do so prior to going off duty, unless immediate medical attention is needed. If immediate medical

attention is needed, the employee will make and submit such a written report just as soon as he is able to do so after obtaining medical attention. . . .”

The Claimant, who was assigned as a Carman at the Laurel, Montana, shop, was called in to work overtime on third shift beginning at 11:00 P.M., Sunday, November 28, 1999. At around 1:30 A.M., he and three other Carman, M. Turner, T. Sampson and B. Peters, lifted and carried a coupler across three tracks and placed it into a pickup truck for disposal. Although he did not say anything to his co-workers at the time, the Claimant acknowledged that he felt some “soreness or stiffness” in his lower back which continued for several days. The Claimant did not notify the Carrier of the incident and he continued to perform his assigned tasks on November 30 and December 1, 1999. This was followed by three days of vacation and two rest days. According to the Claimant, he waited to see if the discomfort abated, but after a week, the pain had worsened. The Claimant testified that he had been coughing as a result of a cold and he thought that the cough had exacerbated the soreness in his lower back area.

On Monday morning, December 6, the Claimant sought medical attention for his back pain at the Occupational Health Services Clinic in Billings, Montana. He was diagnosed with a lower back strain. Medication was prescribed and the Claimant was advised not to lift over 20 pounds and to minimize bending and twisting movements.

Later that morning, the Claimant reported to work and informed Mechanical Foreman R. Wegh for the first time of his injury. He also filed a personal injury report on that date.

Based upon the record, it is the Board’s judgment that the Claimant violated the Rules as charged. The Claimant acknowledged that it was his responsibility to immediately report injuries. He conceded that he felt a continuing soreness in his lower back after he and his fellow employees lifted and moved the coupler on November 28. Although the Organization argues that not every ache and pain is tantamount to a reportable injury, it is clear that this was not a momentary twinge. The Claimant’s back condition manifested itself after moving the coupler and it worsened over time. He required medical treatment and had to be placed on work restrictions. The Claimant should have reported the incident immediately.

The factual circumstances herein underscore the importance of adhering to the Carrier’ reporting requirements. Precedent Awards on this subject emphasize that the purpose of the reporting requirement is not only to mitigate the Carrier’s liability

exposure in the event of a claim, but to allow the employee to receive prompt medical care so that the injury is not further aggravated. Third Division Awards 19298, 23484, 26663, 32498. Had the Claimant adhered to these Rules, the extent of his injury may have been reduced.

With regard to the question of remedy, the Organization argued that the penalty of a 30-day suspension was excessive, given the Claimant's clean work record. However, the failure to promptly report an injury as required is regarded as a serious offense in this industry which carries with it serious discipline. See, Third Division Awards 19298, 26663, 32606, 35608 (dismissals upheld). We find no basis for a finding that the suspension imposed was arbitrary or unreasonable in light of the misconduct proven on this record.

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 11th day of February, 2002.