

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20152  
Docket Number CL-20211

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and **Steam-**  
( ship Clerks, h-eight Handlers, Express  
( and Station **Employees**

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and **Jervis**  
( **Langdon, Jr.**, -Trustees of the **Property** of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(GL-7308) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 30 days suspension on F. V. Vittore, Station **Baggageman**, Penn Station, New York City, Metropolitan Seniority District, New York Region.

(b) Claimant F. V. **Vittore's** record be cleared of the charges brought against him on April 14, 1972.

(c) Claimant F. V. Vittore be compensated for wage loss sustained during the period out of service, plus interest at **6%** per **annum** compounded daily.

OPINION OF BOARD: The Petitioner brings this appeal from a 30 day suspension assessed against **Claimant** after hearing and findings of guilt on the following charge:

"Violation of Safety Rule **2001(a)**. Failure to report, until **9:45** P.M. March 23, 1972, alleged personal injury to right arm, you claim happened at approximately **2:45** A.M. March 23, 1972, while attempting to open door of Baggage Car on Platform 4."

The safety **rule** involved in the charge, Rule **2001(a)**, reads as **follows:**

"2001. Injured **employee** shall **immediately:**

(a) Inform **immediate** supervisor, even though extent of injury appears trivial."

The grounds of appeal are that (1) the discipline was assessed by a person other than the Hearing Officer and (2) the findings of guilt and discipline imposed are not supported by the record.

The record here provides no substantive support for the first ground of appeal. The hearing evidence produced no factual conflict and, thus, it is of no significance that the person who served as Hearing Officer did not also assess the discipline.

The facts involved in the second point of the appeal are not in dispute. The incident underlying the charge occurred at about **2:45** a.m. on March 23, 1972, while Claimant was working his assigned hours of 10:00 p.m. to 6:00 a.m., but Claimant did not make a report until **9:45** p.m. on March 23. His testimony on these matters is as **follows:**

"Q. When was the first time you made a supervisor aware of your personal injury?

A. When I reported it to **Mr.** Finn at **9:45** P.M., March 23, 1972.

Q. Mr. Vittore, do you have a Safety Rule Book?

A. Yes, I have one right here in **my** pocket.

Q. Do you wish to explain why you failed to comply with Safety Rule **2001(a)** on March 23, **1972**?

A. **After** I opened the baggage car door, I felt a little pull in my right arm but it didn't bother me at that time and I didn't think that it was anything serious at the time it happened. So I continued working until I completed my tour of duty and I then went home.

\* \* \* \* \*

Q. Mr. Vittore, is there anything further that you may wish to add **at** this time?

A. ALL I know is that I reported my personal injury on the same day although I realize that I did not report it immediately." (Emphasis added).

Claimant's Supervisor, Mr. W. B. Finn, gave the following testimony:

"A. My **knowledge** of this charge is indicated in the letter that I will now read, which **was** dated March 23, 1972 and' addressed to Mr. V. O. **Pederson**, Agent:

'Mr. Pederson, Agent

**Baggageman F. Vittore, #014801**, came from home to the Baggage Office at **9:45** P.M., tonight and reported to me that he was injured while opening a baggage car door on Train No. 4. He did not know the number of car. He said that he injured his right arm. While examining his arm, I found that it was black and blue from the shoulder extending to the wrist. I asked **how** this occurred and Vittore said that it was the result from bathing it in Epsom salts and a tight Ace bandage. I sent Vittore to the French Hospital for examination and treatment under the supervision of General Foreman **Sacca**, with instructions that he should secure and report all information. I then proceeded to take statement from Foreman P. **Payne** and Baggageman **Tedesco**.'"

On the basis of the foregoing, and after considering a prior one day suspension for a safety violation in 1968, the Carrier assessed a 30 day suspension against Claimant.

**The** Petitioner argues that the timing of Claimant's report of the injury was in compliance with Rule **2001(a)**, as reasonably interpreted, and that, consequently, the discipline should be set aside. Second Division Award 3966 is cited as supporting this position. In that Award the Second Division held that an injury report by an employee was **timely** where a foreign substance, which got into an **employee's** eye on Friday, was reported by the employee on the following Monday which was the next work day. Thus, the Second Division **has** condoned a Longer time-lag between injury and report than obtains in this case. However, the opinion in Award 3966 also indicated that the applicable rule failed to specify the person to whom the employee could have reported. The rule in this case contains no comparable defect; it clearly names the **employee's immediate** supervisor as the person to **whom** an injury must be reported and, therefore, the cited Award is not apropos. The record here involves an unambiguous reporting requirement which not only serves the Carrier's interest in protecting against false claims for injuries, but also serves the employees' interest in getting prompt medical attention for on-the-job injuries. The Claimant admitted that he did not report the injury until nineteen hours after he

felt "a little pull" in his **arm**; other evidence showed that by the **time** of his report the arm was "black and **blue**" from the shoulder to the wrist. So, while we perceive that a nineteen hour lag between injury and report might not be untimely in **every** situation, we believe that Carrier was justified in concluding in this case that **Claimant** had not properly complied with the reporting requirement. We are concerned, though, about the quantum of discipline because we believe it was excessive in the context **of** the entire record. Claimant was 49 years old and had 30 years service with the Carrier when this incident arose. So far as the record before us shows, the Claimant had an unblemished record except for a one day suspension in 1968. Also, in the instant case, the Claimant worked for three hours after he felt the "pull" in his arm and we believe this provides a strong indication that, for at least part of the day of **March** 23, the Claimant regarded his injury **as** having a non-reportable nature. We shall therefore reduce the discipline to fifteen days and award that Carrier shall pay Claimant for fifteen days of wage loss without interest.

FINDINGS: **The** Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

**That** the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The discipline was excessive as per Opinion.

A W A R D

The discipline is reduced to fifteen days and Carrier shall pay Claimant fifteen days wage Loss without interest.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this **28th** day of February 1974.