

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21822

Docket Number MW-21919

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(St. Louis-San Francisco **Railway** Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The suspension of **Trackman** G. F. **Bahr** for the period extending from October 13 through October 24, 1975 was without just and sufficient cause and on the basis of charges which were disproven at an investigation conducted on November 12, 1975 (System File B-1525).

(2) **Trackman** G. F. **Bahr** shall now be allowed the benefits prescribed in Agreement **Rule 91(b)** (6).

OPINION OF BOARD: Provisions applicable to this case are as follows:

Rule n3 - Maintenance of Way and Structures

"If **physically** able, an **employee** injured on duty must report the injury to his foreman or other supervisory officer before leaving company premises.

"A report must be made of every injury, regardless of how slight. The supervisory officer should arrange prompt first-aid for the injured person, then place him under care of medical doctor as soon as possible, reporting the injury promptly on prescribed forms regardless of how minor it may appear."

Rule **91** (a) (6) Discipline Rule. Agreement between the Parties

"If the **charge** against the **employee** is not sustained, it shall be stricken from the record. If by reason of such unsustained charge the employee has been removed from position held, reinstatement **will** be made and payment allowed for the assigned working hours **actually** lost while out of the service of the Carrier at not less than the rate of pay of position **formerly** held, or for the difference in rate of pay earned if in the service, less any **amount** earned in other employment."

It has been established that the Claimant made his foreman aware of his complaint with a sore shoulder no later than Thursday, September 18, 1975. It is also apparent that the foreman considered it as part of a general complaint by the entire gang relative to "aches and pains." The record indicates that a witness to the discussion corroborated the Claimant's having informed the foreman of this problem on Wednesday, September 17, 1975. This same witness was present on Friday morning, September 19, 1975, when the Claimant informed the foreman that he was going to the doctor that afternoon.

In a discipline case, the duty rests upon the Carrier to establish the basis for just cause in its actions. In this specific case, the burden of proof is on the Carrier to show that the Claimant failed to meet the requirements of appropriate rules or regulations to report an injury.

A reading of the record evidences somewhat confusing and contradictory testimony by all of those directly involved. What seems obvious, however, is that the Claimant did endeavor to make his problem known, did inform the foreman of his intent to go see a doctor, and did show up on Friday morning, September 19, 1975, at the facility to complete whatever forms were appropriate in this regard. Such efforts were corroborated by a witness, whose testimony, though flawed in places, stands the test of credibility. The Carrier bases its case upon the imprecision of the Claimant's notification of his need and intent to consult a physician, instead of establishing a positive rationale for its own actions.

We are satisfied that the Claimant sufficiently met his obligation to notify in this case, as required in Rule 713. We are not satisfied that the Carrier has established just cause for its disciplinary actions. The Claim shall be resolved as per the provisions of Rule 91 (b) (6).

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated.

A W A R D

The Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1977.