

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24031
Docket Number MW-23954

T. Page Sharp, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railroad Company

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

(1) The forty-three (43) days of suspension imposed upon Section Laborer J. D. Aire for alleged failure to promptly report a personal injury sustained by him on November 1, 1979 was capricious, arbitrary, unwarranted and on the basis of unproven and disproven charges (System File D-6-80/MW-17-80).

(2) The record of Section Laborer J. D. Aire be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On December 12, 1979, Claimant advised his supervisor of an injury that he had allegedly sustained on duty November 1, 1979. Because of his delay in notifying his supervisor concerning the injury an investigation was held and Claimant was held to have been violative of his duty to promptly report his injury to his supervisor.

During the course of the hearing Claimant testified that he had injured his back lifting ties on November 1, 1979, and had continued to work that day and the next. He then had his normal two rest days. When he reported to work Monday he stated to his supervisor that his back was hurt and that he needed to see a doctor. There is a conflict in the evidence whether or not he told his supervisor that he had suffered an "on duty" accident on November 1. Claimant testified that he had worked the remainder of the day of the 1st and all day on the 2nd and that he had suffered back pain on both days.

Claimant testified that he had been examined on the Operating Rules. Rule 355 of the Operating Rules states:

"If an employee is injured on duty or while on company property, immediate verbal report must be made to the injured employees supervisor, who then must report the incident to the proper authority. All injuries to employees when on duty, and off duty injuries where they occur on Company property and all injuries to persons other than employees occurring on Company property, must be promptly reported on Form 3922 (Personal Injuries and Vehicular Accidents). Crew members and all other employees witnessing the accident, or injury, must submit report."

Also Safety Rule No. 1 reads:

"Report all injuries promptly to immediate supervisor. obtain immediate first aid and necessary medical attention for all injuries."

There can be no doubt that Claimant violated the appropriate Operating and Safety rules.

Adherence to the safety rules is of paramount importance. The instant safety rule is designed with the welfare of the employe in mind. His injury is immediately known to the Company so that It can promptly address his condition. Regardless of when Claimant acted, his supervisor was not promptly notified. if Claimant was injured on November 1, the fact that he worked the remainder of that day and the next under severe back pain could have aggravated the injury to a grievous extent.

As an Award on this same property, No. 22650 stated:

"A Safety Rule, by definition, is not designed to proscribe willful infractions only, it is also carefully designed to address careless or indifferent behavior as well."

As exemplarily as continuing to work may seem, it is careless and indifferent behavior as concerns an injury.

The Board considers railroad safety of the highest order. Violation of a safety rule even if no adverse consequence occurs cannot be tolerated. Here, where apparently the violation led to adverse consequences the Carrier had a right to discipline Claimant.

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 Employes involved in this dispute are respectively Carrier and Employes 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

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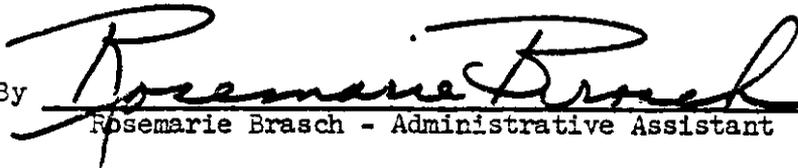
That the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting **Executive** Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November 1982.