

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24333
Docket Number MW-24500

William G. Caples, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Employes**
(The Ann Arbor Railroad System (Michigan Interstate
(Railway Company - **Operator**)

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

(1) **The** twenty (20) calendar days of suspension imposed upon **Sectionman** T. D. Beck for 'alleged failure to properly report an alleged on-duty injury which occurred **on** January **13, 1981**' was without just and sufficient cause.

(2) **The claimant's** record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant with approximately **two** and one-half years of service for this **Carrier** was employed as **a** section **man**. He was assigned to **Section No. 6** at **Cadillac**, Michigan and was working under the **supervision of Section Foreman Scarboro** when the incident involved here occurred.

On **January 13, 1981** the **Claimant** and other members of **Section 6** were assigned to **remove** ice from flange ways at "the Brooks and Perkins track" near Cadillac, Michigan. About **1:00** in the afternoon of that day Claimant felt a tightening of the muscles in his back which he did not mention to anyone at the **work** place on **that** day. Later he testified at the inquiry that "I felt at the time it was **not** serious **enough** to **report** to **my** supervisor at that point and **time** and hinder my work." He **continued** to **work** the rest of the day and worked on the following work day, **the 14th**. On **the 15th** the **Claimant** reported off sick and advised **that** he was going to see the company doctor. An **appointment** was made with the **company** doctor by the foreman, who also reported the accident, examination was made by the **company** doctor and the Claimant **was** returned to work on the 16th.

On **February 3, 1983** **Claimant** was asked to report to **attend** a formal investigation to determine **the** facts and his responsibility if any for his failure to properly report an alleged injury which occurred to him on January 13, **1981**. The **company** claiming **prior** to the investigation that the first **knowledge** they had of an injury was on January 15, **1981**. The **Claimant** was invited to bring witnesses and representatives or both and did in fact do so. At the inquiry was his General Chairman and Vice **Chairman - Secretary Treasurer** of the **Organization**. The claim is essentially in **two** parts. First, was there an accident? Second, if there **was** an accident. **was** there **a** violation of **General Safety Rule 1** which provides as follows:

"All personal injuries, no matter how slight, must be reported to the proper supervisory officer on form **GA-410-9-78** as soon as practicable after the injury occurs, but in no event before

the employee leaves work that day. Information shown on Form GA-410-g-78 must be complete. Supervisory officer or foreman will see that the report is transmitted to the general office by wire **immediately**. **Obtain immediate** first aid or medical attention for all injuries. Failure to make **prompt** report of **injury** will result in disciplinary action."

✓ On the 15th of January, Foreman, after talking to the Claimant, did file the report called for **under** general safety Rule 1.

1 First we will deal with the **number** of procedural **points** put forth by the Organization by stating that a review of the record reveals the Claimant was not denied any substantive procedural rights and that he was afforded a full and **fair** hearing.

✓ As to whether an accident occurred or not, this Board is mindful of the fact words have different meanings to different people but for **the** purpose of our deliberations we are bound to standard dictionary definition of accident **which** is "an event **occurring** by chance or out of unknown cause" **or** "an unsuspected happening causing loss **or** injury which is not due to any fault to misconduct **in** part of the person injured."

6 Therefore, we **fail** to **agree** with the Claimant's **argument** that the involuntary contraction of a muscle cannot by any stretch of imagination be construed as an injury. **In** this case Claimant **knew** of the spasm when it happened, results **lingered** with him to the degree that he was unable to work the 15th. the second day after the accident. **This in** spite of **the** fact that Claimant testified at the inquiry, "I felt at the **time** it was not serious enough to report to my supervisors at that point in time and hinder **my** work."

7 The question **then becomes** whether or not **it was a violation** of Rule 1. This **Board** agrees with the many citations **made** by **the** Organization **that** to find the **Claimant** guilty as required by the **contractual** agreement imposed on the Carrier the burden of proving guilt by substantive evidence of probative value. It seems **that** the facts are the Claimant made an error of judgment in not reporting the incident. However, the rules calling for **reporting** of accidents are **for** the benefit of a **group** of people, the **employee, his fellow workers, the safety of others on the railroad and the public generally**. **Therefore it is** not unreasonable **the** Carrier should demand the rule as to notice be promptly and properly carried out. It is obvious from this typewritten transcript that an error was **made** and the injury should have been and was not reported **in** accordance with the rule. **Therefore, we must conclude that the rule was violated.**

6 This brings us to the point of **whether** or not penalty involved is arbitrary, capricious, unreasonable **or** unjust. **This Board** is reluctant in cases to substitute its judgment for **the** judgment of the Carrier but in this case severity of the discipline of 20 calendar days appears to be **too** much and the **penalty is reduced** to 10 **calendar** days.

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


That the discipline was excessive.

A W A R D

Claim sustained **in** accordance **with the Opinion.**

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 **27th day of April 1983.**