

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25561
Docket **Number** a-25377

Frances Penn, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers. Express and Station **Employees**

PARTIES TO DISPUTE: {
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF **CLAIM:** Claim of the System Committee of the Brotherhood IGL-9811)
that:

1) Carrier violated the Clerks' Rules Agreement at **Bensenville**, Illinois, when it charged, held investigation and assessed discipline of ninety (90) days actual suspension to Employee C. P. **Castillo** on June 23, 1982.

2) Carrier shall now be required to clear **Employee C. P. Castillo's** personal record of all mention of charges, investigation and assessed discipline, as described in **Item** 1 above, and compensate him for all lost time caused by such suspension.

OPINION OF BOARD: The Claimant, Train Clerk C. P. **Castillo**, was assessed a ninety (90) day suspension for failure to file promptly Form 171 Report of Injury to Person for an injury that Claimant alleges occurred on May 8, 1982. The report was dated **May** 31, 1982.

The basic facts involved in this claim were not in dispute. The Claimant had back surgery in 1974 and 1976. On May 8, 1982, the Claimant's Supervisor told him to move approximately 20 boxes from one area of a storage shed to another. The Claimant told the Supervisor that he had had **two** operations on his back and then followed the order and performed **the** work. Following this, the Claimant says that he felt "**discomfort**". The Claimant worked on May 8, May 9 **and** May 10th and did not report any injury. On **May** 10, he wrote a letter to the Local Chairman of the Organization telling him about the incident on May 8. He had rest days and vacation between **May** 11 and May 20th. He returned to work on **May** 21, and worked that day. On May 21, he **saw** the Doctor because of pain in his arm and neck. The Doctor prescribed medication for Claimant's pain. The Claimant called in sick on the 22nd and was hospitalized on May 23, for **treatment** of a pinched nerve in his neck. On May 26, he called **the** Claims Office of the Carrier and asked for an Injury Report form, which was mailed to him. The Claimant was released from the hospital on **May** 29. The form was filed on **May** 31, 1982.

The Carrier's procedures for reporting personal injuries are stated in the Bulletin dated February 15, 1980, and the Bulletin dated January 4, 1982. The 1980 Bulletin states:

"In the event of any accident or incident involving personal injury, train-auto collision, derailment, or property damage to Railroad equipment or property, the following reports must be made:

"1. **VERBAL** report immediately to the dispatcher (in the case of **mainline derailments**) or your supervisor (such as **Chief Clerk yardmaster, Foreman, Asst. Capt., etc.**)

"2. **WIRE** report to Division Manager and others per previous instructions before your tour of duty is **over**.

"3. **WRITTEN** report to immediate **supervisor** and others per previous instructions before your tour of duty is over.

"The information received is **then** transmitted to the proper corporate officers and Governmental Agencies.'

The Organization contends that the Carrier violated Rule 22 of the Agreement **between** the Parties by failing to establish the Claimant's guilt and by assessing him with discipline that was not warranted. The Organization maintains that the Claimant filed the report as soon as he became aware of the extent of his injury. The Organization argues that the Carrier presents no evidence that the notices of its policy regarding reporting injuries had been made known to **Employees**. The Organization also contends that the discipline was arbitrary, capricious and harsh.

The Carrier contends that the evidence supports its action in disciplining **the** Claimant because he failed to follow the procedures set forth in its Bulletins. Although the Claimant worked for several days following May 8, he did not contact any Carrier **Employee** until he telephoned the Carrier on May 26th. The Carrier notes that the Claimant wrote a letter on **May 10** to the Local Chairman telling him about the incident on May 8th. The Carrier also points out that the Claimant did not see a Doctor until **May 21st**.

After a careful review of the entire record, the Board finds that the evidence fully supports the Carrier's action in disciplining the Claimant. None of the **evidence** provides either an explanation **or** an excuse for the Claimant's failure to report the alleged injury to the Carrier. Whether **or** not the Claimant had seen the particular Carrier Bulletins, he knew that injuries had to be reported to the Carrier; both his own testimony and his action in calling the Claims Office show that he was aware of this requirement. The fact that he wrote to the Local Chairman on May **10th**, indicates that he was aware at least by then that he might have injured himself. In describing his letter to the Local Chairman he stated: "I notified him that I came in to work the following day with my back **hurting**". He also stated that he believed at that time that he had hurt his back carrying the boxes. He worked on May 21, the day that he saw his **Doctor**, yet he still did not take any action to inform the Carrier that he believed he had injured himself,

Prior Awards clearly establish that discipline by a Carrier for failure to **report** an **injury** are justified (**See** Fourth Division Award No. 4199, and Third Division Award **Nos.** 24333, 24654, 22936). This is a rule of **reason** which is necessary to permit the Carrier to limit its liability and to evaluate its **Employees'** working conditions to make them as safe as possible. Under the circumstances in this case, the Board finds that the Carrier was justified in its discipline of the Claimant. There is nothing in the record which indicates that the Carrier has acted in an arbitrary, harsh **or** capricious **manner** in the discipline which it assessed to the 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 **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

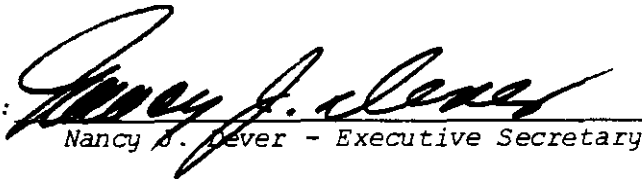
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.