

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26568
Docket Number MU-25998

Lamont E. Stallworth, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company (former The Detroit
and Toledo Shore Line Railroad Company)

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

(1) The discipline (letter of reprimand) imposed upon **B&B** Foreman C. E. **Billmaier** 'for failure to comply with Rule 6, paragraph (b) of GT General Rules for Employees Not Otherwise Subject To The Rules For Conducting Transportation' on February 10, 1983 was without just and sufficient cause and unwarranted (System File D-D-1624).

(2) The letter of reprimand (dated March 2, 1983) referred to in Part (1) hereof shall be removed from the claimant's personal record."

OPINION OF BOARD: This Claim involves a Supervisor's duty to report an injury of one of his **employees** to a higher Supervisor. On February 10, 1983, the Claimant was working as a Foreman in the Carrier's Bridge and Building Department of the Carrier's Lang Yard, Toledo, Ohio, facility. On that date, one of his subordinates, Utility Man R. M. Rose, sustained a personal injury, a cut to his forehead, requiring him to go to the hospital and receive several stitches.

Neither the Claimant nor the injured employee informed the Claimant's Supervisor of the injury until the following day, February 11, 1983. near the start of the work day. The Claimant received a letter **soon** afterwards informing him that there would be an investigation into his failure to comply with Rule 6, Paragraph (b) of the applicable employee Rules. That Rule provides:

"Report promptly to immediate supervisor all injuries. Initial report should include information pertaining to the injury such as location, equipment and circumstances."

After a formal Hearing the Claimant was found guilty of not complying with Rule 6. In view of the Claimant's clean discipline record, the Carrier stated that it would only include a letter of reprimand in the Claimant's file. The Claimant now seeks to have the letter removed from his file.

The Board concurs that the discipline should be rescinded and the letter removed from the Claimant's file. The language of the Rule itself is ambiguous: it does not specify who must report an injury, and it uses only the word "promptly" to describe when an injury must be reported. These ambiguities are critical in this case, for the following reasons.

The Claimant contends that he did not realize that the Carrier **considered** it his duty to report the injury to his Supervisor. He gave **uncontradicted** testimony at his disciplinary Hearing that when he had been injured himself he had filled out his own injury report. The Carrier presented no evidence demonstrating that it clarified for its Foremen that they were **to** report all injuries of their subordinates. The Carrier suggests that if the Claimant was unsure of the meaning of the Rule, he should have asked for clarification. However, nothing in the language of the Rule suggests that Foremen are required to report the injuries of their subordinates, **so** there was not necessarily any reason for the Claimant **to** seek clarification.

The Carrier argues, however, that the Claimant spoke to his Supervisor not **more** than half an hour after the accident, and should have reported the injury at that time. However, as discussed earlier, there was nothing in Rule 6 which would have alerted the Claimant that it was his responsibility to report the injury to his Supervisor. And he had at least **some reason to** believe that his Supervisor, Mr. Britton, had been notified of the injury, since Mr. Britton's Supervisor was in the bathroom with the injured party while he was tending his injury, and spoke to Mr. Britton on the telephone just before the Claimant. In addition, the Rule does not say how many supervisors up the chain of command must be notified. In fact, the language of the Rule suggests that it was followed when the injured party reported the injury **to** his immediate Supervisor, the Claimant. And it seems that the injured party is in the best position to meet the Rule's requirement to provide specific details of the accident, such as location and equipment involved. Furthermore, the Rule states only that the injury must be reported "promptly." It does not say that it **must** be reported immediately, which is the interpretation suggested by the Carrier. The Board cannot say that the Rule's requirement of "prompt" reporting was not met by a report made at the start of the following day of an injury occurring towards the end of the previous work day.

Therefore, the Board concludes that the Carrier acted unreasonably when it imposed discipline upon the Claimant. The Claim must be sustained.

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

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest::


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.