

The Third Division consisted of the regular members and in addition Referee Marty E. **Zusman** when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (**Southern** Region)

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

1. The five (5) days of suspension imposed upon **Trackman** E. F. Hall for alleged violation of Safety Rule No. 1 was improper, unjust and in violation of the Agreement (System File C-D-2386/MG-4773).

2. The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or **carriers** and the **employee** or employees involved in this dispute are respectively carrier and **employees** within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction **over** the dispute involved herein.

Parties to said dispute valued right of appearance at hearing thereon.

Claimant was **notified** by Certified Letter of May 14, 1984, to attend an Investigation to determine his alleged responsibility for a violation of Safety Rule No. 1. That Rule requires all employees:

"To report all personal injuries to proper supervisory officer, giving full details in duplicate on Form CJ-68 before ending tour of duty or as **soon** thereafter as possible."

On or about 2:30 P.M. on April 11, 1984, Claimant sustained a back injury **while** lifting railroad **ties**. He missed the next few days of work, reporting sore muscles. It later developed that Claimant had an acute **sprain** injury.

After postponements, **an Investigation** was held on June 27, 1984. **The** Claimant was subsequently notified that he had been found at fault and was assessed a five (5) days actual suspension for violation of Safety Rule No. 1.

Central to this dispute is a procedural issue which must be considered before reaching the merits. The **Organization** argues a time violation in that the Hearing **was not** held within the time specified by Agreement Rule 21. In pertinent part, the applicable Rule states that:

“He may, however, be suspended pending such hearing, which shall be held within twenty (20) days of the Company’s knowledge of the alleged offense and decision shall be rendered twenty (20) days from completion of hearing.” (emphasis added)

In the facts and circumstances of this case, Claimant contacted the Track Supervisor by phone on April 26, 1984. The Track Supervisor testified in part that:

“Mr. Hall called me that morning and **in** the conversation he said he had hurt his back . . . At this time I asked if he had been injured and he said that he thought it was **account** of not just doing any work. When he went to the doctor he found something wrong with his back or neck and the doctor had kept him off from work. At this time I told him that he should have filled out a **CJ 68** accident report **if** there had been an accident. There was no way possible for me to help pay his doctor bills or eve” consider paying for doctor bills unless there was a **CJ 68** filled out on the injury because that is how they pay the bills.”

The **Organization** argues that the “Supervisor on that district was **aware**” of the injury on April 26, 1984. The twenty (20) day time limit in which a Hearing **must** be held was violated when the Hearing **was** scheduled for May 24, 1984.

The Carrier does not deny that the phone call was made, “or that the Claimant’s problem was discussed. It **states** that neither the phone conversation nor other events “established that Mr. Hall was claiming a job related injury.” It argues that only when the Claimant filed the CJ-68 was the injury know” to the Carrier and thereafter it acted within the Rule.

This Board finds that the Carrier was aware of the Claimant’s injury on April 26, 1984. The testimony of the Track Supervisor establishes that a” injury had occurred. The Carrier **was** on notice that Claimant may have violated Safety Rule No. 1. Accordingly, the scheduled Hearing of May 24, **1984**, violates the Agreement and we may not reach the merits. The Claim must be sustained as submitted.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1988.