

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
(Delaware and Hudson Railway Company

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

(1) The fifteen (15) days of suspension imposed upon Trackman H. Tallman for alleged violation of Rule 0-2 was without just and sufficient cause and on the basis of unproven charges (Case #2-85).

(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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant was charged with falsifying an on-duty personal injury. Following a Hearing held on November 9, 1984, Claimant was found guilty and assessed discipline of fifteen (15) days suspension.

The Organization argues that Claimant did in fact experience an on-the-job injury on June 20, 1984. It maintains that there is no evidence of record to support the Carrier's finding of guilt.

The Carrier asserts that Claimant did not injure himself on the job. Claimant reported for work on June 20, 1984, with a stiff neck. Employees working with him on that day testified that Claimant reported no injury. Carrier maintains that Claimant's June 21, 1984, report of an on-duty injury on the previous day was a falsified report.

It is the determination of this Board after a complete review of the transcript and a thorough consideration of the facts that the record does not support the Carrier's findings. The evidence indicates that Claimant did

sustain a severe strain while rerailling the rail lifter machine on June 20, 1984. Claimant did not report the injury until the afternoon of June 21, 1984. There is sufficient probative evidence that June 21, 1984, is the date when the injury became known to the Claimant. As this Board has previously stated "it is quite common for injuries to manifest themselves some time after the incident that caused them." (Second Division Award 7703).

The Board is concerned with any incident wherein a Claimant fails to report on-duty injuries immediately. The Claimant has a responsibility and the Carrier a right to know of any injury at the time it occurs. This Board is well aware that in the Carrier's responsibilities for safety and its operations, it must expect and demand immediate notification. In the instant case, the Claimant notified Carrier a day late, but when it became clear that an injury had occurred. The Board recognizes that this is not immediate notification, but Claimant was not charged with timely notice, but with falsification.

Accordingly, the Claimant's record shall be cleared of the charge leveled against him, as there is no evidence of record to conclude that Claimant falsified a report of personal injury. The monetary portion of the Claim is denied, however, account the November 15, 1984, discipline letter stated that the time Claimant previously lost account of his neck disability would be applied and no further time assessed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.