Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28625
Docket No. MW-29188
90-3-90-3-55

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc.
(Formerly Chesapeake and Ohio Railway Company)

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

(1) The discipline assessed Claimant L. T. Judd, five (5) days' overhead suspension and ten (10) days' actual suspension from service, for alleged failure to wear a seatbelt and failure to properly report an injury, was without just and sufficient cause [System File C-D-4721/12(89-12) COS].

(2) The Claimant shall now '*** be paid for each and every day lost account of this discipline, that these days be credited toward his vacation qualifying time and that the discipline be removed from his record.'"

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 employed by Carrier as a Trackman. He had approximately eleven (11) years of seniority and service with the Carrier when, on September 20, 1988, at approximately 3:45 P.M., while on duty and under pay, he was involved in a traffic accident. At the time of the accident, Claimant was a passenger in a company owned vehicle which was being operated by an Equipment Operator. During an Investigation of the accident by the State Police, it was determined that the Claimant was not wearing his seat belt. During that same Investigation, it was reported that no one involved in the accident had sustained any personal injuries. At approximately

5:00 P.M. on September 20, 1988, the Equipment Operator made a vehicle accident report to his Roadmaster and again it was indicated that no personal injuries had been sustained by anyone involved in the accident. Subsequently, on September 21, 1988, when the Claimant reported for duty, he complained to his Foreman of a headache and a neck strain. At that time, he prepared and submitted a personal injury report form and was given immediate medical attention by the Carrier. The Roadmaster's report, which was introduced at the on-property Investigation, indicated that:

> "Doctor Verma said they could not find anything and gave Judd a prescription for pain and a note to rest 3 days."

By notice dated September 26, 1988, the Claimant was instructed to attend an Investigation on October 10, 1988, relative to charges of failure to wear his seat belt and failure to promptly report an alleged personal injury. The scheduled Investigation was postponed at the request of the Organization's representative. It was eventually held on November 14, 1988, at which time Claimant was present and represented. Later, by letter dated November 28, 1988, Claimant was informed that he was found at fault and was assessed a 5-day overhead suspension for his failure to wear his seat belt and a 10-day actual suspension for his failure to properly report the personal injury. This discipline has been appealed on the Claimant's behalf by the Organization's representative through the normal appeals procedures on the property, and, failing to reach a satisfactory resolution thereon, has come to this Board for final adjudication.

Of importance in this case are General Safety Rules No. 37 and No. 110. Rule No. 37 reads as follows:

> "Employees must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while the employee was on duty or on Company property. In turn, upon receipt of the report, the employee in charge or the supervisor must make a prompt written report of the injury. The injured employee must furnish the written injury report on the prescribed form; or if the injured employee is unable to do so, the required report must be furnished by the supervisor or the employee in charge.
>
> * * * * * * *."

Rule No. 110 reads as follows:

> "Occupants of vehicles and equipment must use seat belts when provided."

During the Investigation Hearing, the Claimant acknowledged that he had, in fact, received a copy of the General Safety Rule book, but stated that he had not read it and denied any knowledge of the existence or provisions of Rules No. 37 and No. 110. He freely admitted during the Hearing that he was not wearing his seat belt on September 20, 1988. When asked during the Hearing if he was injured at the time of the accident, he answered, "I must have been." Later in the Hearing, in response to the question, "Does that reporting [the following morning] comply with this Rule 37?," Claimant responded "No it don't."

From a review of the entire record in this case, it is apparent that Claimant did, in fact, violate both Rule No. 37 and Rule No. 110 of the General Safety Rules. The Organization's argument relative to the concommitant responsibility of the vehicle operator to instruct Claimant to use the seat belt and the further contention that Claimant did not have the Safety Rules read to him by someone else are specious at best. Claimant had the responsibility to know the Safety Rules under which he worked. His excuse that he had not read the Rules, or that no one in authority had ever read the Rules to him does not relieve him of the basic responsibility which is his.

The necessity and importance of making prompt reports of personal injuries is recognized by this Board and is a generally accepted employee-employer responsibility and right. The employee is entitled to receive prompt attention to injuries sustained to mitigate, as much as possible, the deleterious effects of a personal injury. The Carrier is entitled to promptly know about all injuries which occur so that potential liability may be mitigated and, if necessary, potential injury causing conditions may be corrected.

The discipline as assessed for these two (2) Safety Rule violations was not arbitrary, capricious or excessive. This Board cannot, and will not, substitute its judgment for that of the Carrier where, as here, the charged violations have been proven by substantial evidence, which includes Claimant's own admissions; and where, as here, the discipline as administered was reasonable and instructive rather than punitive and excessive.

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 17th day of December 1990.