

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28950
Docket No. MW-29482
91-3-90-3-417

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

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

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

(1) The thirty (30) day suspension issued to R. D. Beckett for alleged failure to report his personal injury in accordance with Rule 37 was arbitrary, capricious, excessive, and based on unproven charges [System File C-D-4697/12(89-852) COS].

(2) As a consequence of the violation referred to in Part (1) hereof, 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 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 waived right of appearance at hearing thereon.

By letter dated August 18, 1989, the Claimant was notified of a formal Hearing to be held at the Plant Manager's Office at Barboursville, WV, on August 28, 1989, to address charges that he had violated General Safety Rule 37 at Barboursville Shop on August 3, 1989. The Hearing was postponed and finally held on September 28, 1989. The Rule allegedly violated reads as follows:

"Rule 37: 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 by the employee in charge.

Employees suffering off-duty personal injury that adversely affects their ability to perform normal assigned duties must report their condition to the proper authority prior to reporting for their next shift or tour of duty after such injury."

After reviewing the evidence adduced at Hearing the Carrier suspended the Claimant for thirty (30) days.

The allegations against the Claimant centered on an injury report he filed on August 9, 1989. In the report he indicated there was a possibility he had suffered an on-the-job injury the day before, August 8, 1989. According to the evidence at the Hearing, he had worked eight (8) hours on both August 8 and on August 9, 1989, but filed the injury report the morning of August 9. He was also scheduled to work the following day, August 10, 1989, but called to report his condition had worsened during the night and he had gone to the emergency room. After an examination, the emergency room doctor suggested he remain off duty until August 13, or until he could see another doctor. At the time of the Investigation, he was still under doctor's care.

The Organization urges the Claimant did not realize he might have suffered an injury until the morning of August 9, 1989. Even then he was filing the report merely as protection in the event he did become disabled and he filed the report early that morning. It is often true injuries do not manifest themselves for some time after they actually occur. As soon as the Claimant realized his pain was increasing rather than subsiding, he sought medical attention. Besides, the Carrier failed to prove the charges against the Claimant. They could not show any connection between the Claimant's alleged late filing of his injury report and Safety Rule 37.

In any event, the penalty issued by the Carrier was excessive. There are many instances, involving the same charge, where the penalty issued was far less than that issued the Claimant.

The Manager of Labor Relations claims that in each discipline case the penalty must be examined in its own light. Here, the Carrier contends the Claimant had sustained previous injuries and should have been familiar with the Injury Reports. Even so, there was nothing to show that the Claimant has a history of violating Rule 37.

The Carrier holds the facts of record clearly establish the Claimant's guilt and the discipline was fully justified. Furthermore, the Claimant admitted he had not complied with Safety Rule 37, which required he file his injury report promptly. The Carrier has the right to establish and enforce Rules governing the safety of its operations and working conditions. In this case, the penalty issued was appropriate.

The Board recognizes the need of the Carrier to protect itself against the fraudulent filing of injury claims. One of the ways to assure that on-duty injury claims are legitimate is to have the injury reports filed on the same day the injury occurs. Otherwise, an employee could sustain an off-duty injury and file a claim against the Carrier once s/he returns to work. Safety Rule 37 is important and vital to the operations of the Company.

The Board believes the Carrier has met its burden of proof in this matter. However, the Board also believes that under all the circumstances in this case, the penalty was excessive. The thirty (30) day suspension is to be reduced to a twenty (20) day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.