

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 five (5) day suspension imposed upon R.A. Ferguson for '...responsibility in connection with your failure to properly report personal injury to Mr. Richard A. Ockerman and his violation of improper lifting per CSX Safety Handbook Rule No. 902(c) while working at Bridge No. 595.8 near Maysville, Kentucky on August 15, 1990. ***' was unwarranted, without just and sufficient cause and based on unproven charges [System File C-D-7110/12(90-792) COS].

(2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges 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.

The Claimant has established and holds seniority as a Bridge and Building (B&B) Foreman. On August 15, 1990, Claimant and his crew were assigned to replace guard rails on Bridge No. 595.8 near Maysville, Kentucky. They began work at about 6:00 A.M. with a crew of five employees, including B&B Mechanic Ockerman.

Mr. Ockerman was assigned the task of operating an air drill used for drilling pilot holes for bolts used to fasten guard rails to the bridge. Approximately two hours after he began work, Mr. Ockerman pulled up on his drill to dislodge it from a hole in which it had stuck. Shortly after that exertion, he left his position and reported to the Claimant that he felt a "twinge" in his back. No accident report was filled out at that time, and Mr. Ockerman continued working, completing his tour of duty without incident. The following day, Mr. Ockerman filed an injury report.

On August 20, 1990, the Claimant was notified as follows:

"You are charged with your responsibility in connection with your failure to properly report personal injury to Mr. Richard A. Ockerman and his violation of improper lifting per CSX Safety Handbook Rule No.902(c) while working at Bridge No. 595.8 near Maysville, Kentucky on August 15, 1990.

Arrange to attend investigation to be held in Conference Room 'A' 935 7th Avenue, Huntington, WV, September 4, 1990 at 3:00 p.m

Arrange for representative and/or witnesses if so desired."

Following the hearing, Claimant was notified on September 14, 1990 that he was being assessed "five (5) days actual suspension beginning September 24, and ending September 28, 1990." The Organization appealed the discipline on September 20, 1990. That appeal was declined by the Carrier on October 15, 1990. The Organization then appealed up to and including the highest Carrier officer authorized to handle such matters. The claim was also discussed in conference on April 5, 1991, after which it remained unresolved. Accordingly, it is properly before the Board for adjudication.

It is the position of the Carrier that its General Safety Rule #40 is clear and unequivocal. Rule #40 reads in pertinent part as follows:

"An employee, if physically able to do so, must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while on duty or on Company property. Upon receipt of such report, the employee in charge or the supervisor must make a prompt written report of the injury...."

The Carrier notes that the Claimant admitted at the investigatory hearing that Mr. Ockerman had reported his injury on August 15, 1990. In light of the importance of reporting injuries and in view of the Claimant's years of experience as a foreman, there is no excuse for his failure to fill out a timely injury report. Thus, Carrier maintains that the discipline assessed was appropriate and

should be left undisturbed.

For its part, the Organization maintains that neither Claimant nor Mr. Ockerman felt there was a "reportable" injury until Mr. Ockerman returned to work on August 16, 1990. It notes that when the Claimant asked Mr. Ockerman on August 15, 1990 "if he was going to be alright and he said yes." When Mr. Ockerman finally acknowledged his injury the following day, Claimant filed an injury report as required by Carrier's rules. Accordingly, there is no basis upon which to discipline Claimant, and Carrier's assessment of the five-day suspension should be overturned and Claimant made whole for wages lost.


It has been established on the record before the Board that the Claimant has had considerable experience as a foreman. Moreover, he testified at the investigatory hearing that Mr. Ockerman told him "he had hurt his back a little bit, and was aching" after attempting to dislodge his drill. Claimant apparently made a judgment that, because Mr. Ockerman was able to return to his job, it was unnecessary to report the latter's injury. The language of Rule 40 is clear and unambiguous. "Upon receipt of such report [of an injury], the employee in charge or the supervisor must make a prompt written report of the injury...." Claimant's failure to report Mr. Ockerman's injury on the day it occurred was clearly in violation of that Rule. Accordingly, the Board sees no reason to disturb Carrier's assessment of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated, at Chicago, Illinois, this 7th day of December 1992.