

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31546  
Docket No. MW-32080  
96-3-94-3-471**

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation)

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

- (1) The twenty-eight (28) day suspension imposed upon Track Foreman G.L. Pierson for alleged '...falsification of a service-related injury when you reported to Track Supervisor R.G. Fech at 5:50 AM on Thursday, August 12, 1993 that you had injured your back while operating a hydraulic tamping gun an Anderson Yard on Wednesday August 11, 1993.' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket MW-3108D).
- (2) As a consequence of the violation referred to in Part (1) above, Track Foreman G.L. Pierson's record shall be cleared of the charges leveled against him and he shall be compensated for all lost wages."

**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 employee 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.

Subsequent to an Investigation, the Claimant was found guilty of the following charge, quoted verbatim:

"Your falsification of a service-related injury when you reported to Track Supervisor R.G. Fech at 5:50 AM on Thursday, August 12, 1993 that you had injured your back while operating a hydraulic tamping gun at Anderson Yard on Wednesday, August 11, 1993."

The Organization, on the property, essentially contended that no testimony was presented at the Investigation to show that the Claimant was not injured while on duty. Moreover, given the nature of the injury, it was not "impossible" for the symptoms of the injury not to become apparent until a later time.

Certainly the Organization's contentions on behalf of the Claimant are reasonable. However, the Claimant's own actions run counter to the contentions advanced by the Organization.

In the first place, it is the Claimant's burden to show that the injury occurred on the job. He did not meet this initial and critical burden. Here, the Board notes that two supervisors, as well as the Claimant testified at the Investigation that the Claimant did not experience any pain during the remainder of the day after his alleged injury. The record shows that he performed several arduous tasks subsequent to the alleged injury. The attending physician stated that it was unlikely that the Claimant could have performed these tasks without pain if the Claimant had injured his back in the manner which he described to the Carrier.

Accordingly, we find that the Carrier had a proper basis to conclude that the Claimant was guilty as charged. Therefore, the claim must be denied.

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 25th day of July 1996.**