

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31817  
Docket No. MW-32526  
96-3-95-3-410**

**The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Houston Belt & Terminal Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (20 day deferred suspension) imposed upon Laborer Driver C. O. Robinson for alleged violation of Rules 4004 and E, for failure to timely report an alleged personal injury occurring Friday, May 6, 1994, was unwarranted, without just and sufficient cause and on the basis of unproven charges.**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the benefit of the remedy stipulated in Rule 20, Section 1(C)."**

**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 were given due notice of hearing thereon.**

**This dispute arose when Carrier imposed a 20 day deferred suspension on Claimant for his alleged failure to report a personal injury in a timely manner.**

Claimant is a Maintenance of Way Labor Driver, regular work days Monday through Friday, with Saturday and Sunday as assigned rest days. On Friday, May 6, 1994, Claimant, as Acting Foreman, received instructions to take his gang to the Highway 59 Project to unload ballast. Claimant later stated that he felt "tension in the back of my neck" at the end of the day, but attributed the discomfort to a tension headache. It was not until Sunday evening, May 8, 1994, that Claimant realized his progressive discomfort might be attributable to "pulling and jerking" on the pry bar as he opened the doors of the ballast cars on the previous Friday. Immediately upon arriving at work on Monday, May 9, 1994, Claimant reported his condition to his supervisor, Foreman White, who in turn, contacted Roadmaster Dave Connell.

Roadmaster Connell informed Claimant that he had the choice of going to his personal physician and assuming the cost of the visit, or receiving treatment from a Carrier physician which would "necessitate a written report and attending an investigation." Claimant chose to visit the Carrier physician who informed him that he had "incurred a strain of his upper back." Although Claimant was allowed to return to work, he was advised to undergo physical therapy, with heat and ultrasound, and told to take Advil as needed for pain relief.

On May 13, 1994, Carrier sent Claimant correspondence instructing him to appear for an Investigation in connection with the following:

"Report to the Conference Room 300, Houston Belt & Terminal Railway Company, Union Station Building, Houston, Texas at 10:00 a.m., Friday May 20, 1994 for a formal investigation to develop facts and place your responsibility, if any, in connection with a report that you reported a personal injury on Monday, May 9, 1994, which allegedly occurred on May 6, 1994 while working as Laborer Driver on Gang No. 2 near Runnels St. on the West Belt East Main track. You are therefore, charged with failure to properly report the injury as required by the Maintenance of Way Rules and Regulations."

The Investigation was postponed and held on May 26, 1994. Following the Hearing, Claimant was notified that his record was assessed with 20 days deferred suspension effective May 13, for his failure to report his personal injury until Monday, May 9, 1994.

The Organization submitted a claim on behalf of Mr. Robinson for removal of the 20 day deferred suspension, maintaining that:

**"Mr. Robinson did everything in his power to work safely and report promptly and properly, and reported his injury as soon as he realized it was due to the duties which he had performed on the previous Friday. Carrier's apparent purpose for imposing discipline upon the Claimant was to discourage any future report of a personal injury by the Claimant and by other employees."**

**Finally, the General Chairman noted that "rules of our agreements have been violated, especially Rule 20 of our current working agreement."**

**In its denial of the claim, Carrier stated:**

**"Mr. Robinson reported the personal injury on Monday, May 9, 1994, which allegedly occurred on May 6, 1994, while working as a Laborer Driver, he failed to properly report the injury and violated general Rule 'E' and Maintenance of Way Special Instruction #6. To maintain discipline and to remind employees that safety is of the first importance in the discharge of their duty. Obedience to the rules is essential to safety for each employee."**

**The Parties conferenced the issue, however, when it became clear that they were unable to reach an agreement, the dispute was placed before the Board for adjudication. Careful review of the record evidence persuades us that Carrier did violate the Agreement when it assessed Claimant with a 20 day deferred suspension for allegedly failing to report his injury promptly. The record evidence bears out the Organization's position that Claimant had indeed reported the injury at his earliest reasonable opportunity.**

**Carrier did not dispute that the duties which Claimant performed could be very strenuous. Although Claimant initially attributed the discomfort at the base of his neck to a "tension headache," after two days of progressive discomfort, on Sunday evening May 8, 1994, Claimant realized that he might well have sustained an injury. Claimant's progressive discomfort occurred on his normal rest days, and it was not until Sunday evening that Claimant correlated the discomfort that he was experiencing with the activities in which he engaged on Friday. Immediately upon returning to work on Monday, May 9, 1994, he reported his symptoms and suspicions to his supervisor. In our judgement, Carrier has not carried its burden of proving the charge that Claimant failed to comply with General Rule "E" and MofW Special Instruction No. 6.**

Based on the foregoing, Carrier is directed to remove the 20 day deferred suspension from Claimant's record.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

**Dated at Chicago, Illinois, this 26th day of December 1996.**