

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31818
Docket No. MW-32561
96-3-95-3-485**

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: (
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (15 day suspension) imposed upon Laborer R. A. Jennings for alleged '...violation of Safety Rule 589, by your failure to complete Personal Injury Form 12504 upon sustaining personal injury on October 20, 1993, at approximately 1300 hours while assigned as laborer on Steel Gang RP06, Congress Park, Illinois.' was unwarranted, without just and sufficient cause and excessive (System File C-94-D070-9/MWA 94-04-18AA).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered including all overtime and his record shall be cleared of the charges leveled against him."**

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.

Claimant is a Track Laborer assigned to System Steel Gang RP-06 at Congress Park, Illinois, and was working as such when this dispute arose. On October 20, 1993, after pulling a spike with a claw bar, Claimant told the Roadmaster that he "heard and felt a pop" in his back and shoulder area. However, Mr. Jennings opted to continue working. Later that afternoon, acting Roadmaster Heintz asked Claimant if he was experiencing any problems, and if so, he should "take it easy and relax." Claimant responded that he was not experiencing discomfort and continued to work. However, at approximately 6:30 P.M., after returning to the motel, Claimant decided to be medically evaluated and drove to a local hospital in Hinsdale, Illinois. Claimant was diagnosed with a severely sprained and slightly torn muscle. After receiving the necessary medical attention, including a shot of Demorol, a pain killer, and a prescription for pain medication, Claimant returned to the motel.

When the Assistant Foreman returned to the motel around 9:00 P.M., Claimant informed him of his hospital visit, stating that he had not taken the pain medication because he had decided to drive home that evening and the medication might cause drowsiness. Claimant further noted that because his home was located half way between Congress Park and the next day's work location, Dubuque, Iowa, he would spend the night at home. Claimant stated that he would definitely report for work at Dubuque the next day. It is not disputed that the Assistant Foreman urged Claimant to contact Roadmaster Heintz "as soon as possible" to file his Personal Injury Report. Claimant opted not to wait for the Roadmaster, and instead left the motel and drove home. Claimant did not contact the Roadmaster that evening, nor did he report to Dubuque the next day. It was not until October 26, 1993, when Roadmaster Heintz actually drove to Mr. Jennings home, that the required Personal Injury Form was completed.

As a result of Claimant's alleged failure to promptly report his personal injury and file the requisite form, an Investigation was scheduled. Originally scheduled for November 5, 1993, the Investigation was not actually held until November 11, 1993. As a result of the Hearing, Claimant was assessed a censure on his personal record and suspended for 15 days.

The Organization appealed Carrier's imposition of discipline premised upon the following assertions:

1. It's the Carrier's fault Claimant didn't file a Personal Injury Report on October 20 since acting Roadmaster Heintz did not require him to do so even though it was verbally reported to him.
2. The Roadmaster was never available so the Claimant could file the Personal Injury Report.
3. The first opportunity Claimant had to complete the report was when the Roadmaster came to his home on October 26th.
4. The 15 day suspension was excessive.

The Organization further asserted that when Carrier Officers did not require Claimant to file the requisite report when he verbally reported the injury, Carrier should have filed the report on Claimant's behalf. Therefore, Carrier is holding Claimant to a higher standard than its Carrier Officers, according to the Organization.

Carrier denied the appeal asserting that:

1. Testimony at the hearing clearly proves beyond any doubt that Claimant failed to properly report his personal injury.
2. The Claimant had opportunities to timely file the report but did not.

In the Organization's February 21, 1995 conference confirmation letter to Carrier, it further contended that Claimant was denied his right to due process and did not receive a fair and impartial Hearing because the Hearing Officer acted as the "prosecutor, judge and jury during the investigation and discipline process." Carrier again denied the claim, maintaining that Claimant did receive a fair and impartial Hearing.

The merits issue in this dispute is whether Carrier met its burden of proving that Claimant violated Rule 589 when he failed to promptly report an on-duty injury. However, at the outset we will address the Organization's contention that by serving as the noticing officer, hearing officer and disciplining officer, Mr. Thornburg deprived Claimant of a fair Hearing. Such role mixing has never been encouraged by this Board, but we do not reverse disciplinary action for role mixing *per se*; rather we require a showing of actual prejudice or bias to warrant invalidating otherwise appropriate disciplinary action.

Careful review of the transcript does not support the Organization's contention, and by raising this affirmative defense, it was incumbent upon the Organization to cite specific examples where Claimant's right to fair Hearing was denied. The Organization failed to support that procedural aspect of the claim.

With regard to the merits of this issue, the language found in Safety Rule 589 is clear and unambiguous:

"An employee having knowledge or information concerning an accident or injury to himself or others, must complete Form 12504, Report of Personal Injury, in triplicate, before his tour of duty ends (or as soon thereafter as possible) supplying the information required. All copies are to be sent to the superintendent."

Claimant admitted that he received an on-duty injury on October 20, 1993, and did not file the requisite Personal Injury Form until October 26, 1993. Claimant further admitted that he did not attempt to contact the Roadmaster to fill out the form before leaving the motel, or after he arrived at his home on October 20, 1993. Claimant did state that he attempted to contact the Roadmaster a "couple of times," however, those attempts were made at approximately 8:00 A.M., well after the Roadmaster and gang had departed from the motel to begin the day's work. Claimant had the opportunity to file a Personal injury Report at the time he was injured, but chose not to. Later on the afternoon of October 20, Roadmaster Heintz inquired about Claimant's condition, offering Mr. Jennings a second opportunity to fill out the requisite form, but again he did not. Still later that evening, the Assistant Foreman advised Claimant to wait for the Roadmaster to return to the motel so that he could file the report with him, and again Claimant did not.

Further, Claimant's personal record, in conjunction with his own testimony, indicates that he received a previous injury which he promptly and properly reported. Therefore, it is obvious Claimant could not have been ignorant of the proper procedures surrounding a personal injury.

There is no fatal procedural defect in the investigative record. Carrier proved by a preponderance of evidence that Claimant violated Safety Rule 589, and the penalty imposed cannot be deemed unreasonably harsh. Therefore, based on the foregoing, this claim is denied.

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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 26th day of December 1996.