

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31923
Docket No. MW-32625
97-3-95-3-553**

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 [fifteen (15) day deferred suspension] imposed upon Laborer Driver N. Vega, Jr. for alleged violation of Rule 4004 for failure to report an alleged personal injury sustained by D. M. Sanchez on May 20, 1993 was unwarranted and without just and sufficient cause (System File H-17-94).**
- (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.

N. Vega Jr. (Claimant) is a regularly assigned Laborer in the Maintenance of Way Department. On May 20, 1993, fellow gang member D. Sanchez sustained an injury while using a claw bar. Claimant witnessed the incident, and helped Mr. Sanchez to his feet after he fell. It is not disputed that Mr. Sanchez did not resume his normal duties for the remainder of his shift, and that Claimant performed the majority of those duties on the injured employees behalf. Carrier Rule 4004 requires that all injuries be immediately reported to Carrier, however, Mr. Sanchez did not report the incident, nor did Claimant.

Some 15 months later, Mr. Sanchez' attorney notified Carrier of the injury in an effort to obtain a settlement. To that end, Mr. Sanchez' attorney provided Carrier with documents, among which was a "Sworn Statement of Numenico Vega Jr., in which he claimed to have knowledge of the injury." Based upon this report, Carrier sent Claimant the following:

"Report to the Conference Room 300, Houston Belt & Terminal Railway Company, Union Station Building, Houston, Texas at 10:00 a.m., Thursday, August 18, 1994 for a formal investigation to develop facts and place your responsibility; if any, in connection with a report that you allegedly failed to report an injury sustained by D. Sanchez, that you witnessed on May 20, 1993 while working as a member of the HB&T Maintenance of Way Department. The alleged injury was presented to the HB&T on August 4, 1994 by the law firm of Youngdahl & Sadin representing Mr. Sanchez and contained your written statement dated May 26, 1994."

The Investigation was held as a scheduled, during which Claimant made the following statements:

- "Q. What were your duties when they were changing the rail out, what was your duties?**
- A. I was putting in some plugs, that was my job. Then while I was working with the plugs, Dominguez Sanchez was taking out a spike with a claw bar. It was one of two rails that needed taking out. When he used the claw bar, he didn't go in properly or I don't know, he missed it or slipped and he fell.**
- Q. Did you see Mr. Sanchez fall?**

- A. Yes. He fell and he laid a little while until I came over.
- Q. What did you do when he fell?
- A. First thing I did was go and pick him up.
- Q. Did Mr. Sanchez tell you that he was hurt?
- A. Yes.
- Q. What did you do after?
- A. I removed the claw bar from him and I continued to do his work.
- Q. If he was hurting enough not to do his job, why didn't you call the Roadmaster to get medical attention?
- A. When he fell, because we picked him up, Trevino and I, and I'm going to repeat again, I took the claw bar from him, he didn't say anything. He was the one that was hurting. That was his business if it was hurting him, because I was not feeling it."

Subsequent to the Hearing, Claimant was assessed "fifteen (15) days' deferred suspension as a result of his violation of Rule 4004 of the Safety, Radio and General Rules for all employees." effective August 30, 1994.

The Organization protested the assessed discipline, asserting that Carrier "failed to produce any evidence that the Claimant had direct knowledge of any personal injury occurring to laborer Sanchez on May 20, 1993." The General Chairman maintained that: "Carrier's apparent purpose of imposing discipline was to discourage any future report to any outside concern in connection with a personal injury." The General Chairman further maintained that Claimant could not be expected to report a personal injury in accordance with a Rule "of which he possesses no knowledge," alluding to Claimant's lack of "understanding" of English.

In its denial of the claim, Carrier noted that Claimant was assessed a 15 day deferred suspension "which has been served without any loss of time or compensation by Claimant." Carrier further noted that when Claimant failed to comply with the Rules governing the reporting of personal injuries, it was "deprived of the opportunity to initiate a prompt investigation into the injury to develop all the facts, interview the witnesses, inspect the equipment, observe work site, as well as provide medical attention and medical evaluation for the injured employee."

Regarding Claimant's knowledge of the Rules, Carrier pointed to Claimant's own testimony in which he stated:

- “Q. Mr. Vega, are you familiar with the Special Instructions?
A. Yes, you know when they read it to me like that, I have to write it down because it is impossible to memorize.
Q. They have read this to you before?
A. Yes, the rules and all that.
Q. Aren't you required to fill out a form when you witness an accident or injury?
A. Yes, but that one I didn't fill it out because I was not told anything.
Q. But when you found out about it on May 26th, why did you not fill one out then?
A. I am going to repeat again because that is not my doing. It is not for me to do. I understand that about filling in that yellow paper you know about the accident because I have filled in several for other guys before. Several of us have filled then in. I am saying that he told me that if I would testify that, and I said yes, because I saw it.”

Claimant was assessed a 15 day deferred suspension for his alleged failure to report an injury sustained by fellow employee Sanchez. Carrier contends that Claimant acknowledged that he knew of, and fully understood, the parameters set forth in Rule 4004, and should have promptly reported the incident. For its part, the Organization asserts that Claimant was not “asked” to fill out the requisite form, nor did he have the medical expertise to know whether Mr. Sanchez was truly injured or not. Additionally, according to the Organization, Claimant's command of the English language is such that he did not have a clear enough understanding of the Rule to warrant punishment for not reporting Mr. Sanchez' accident.

However, even a perfunctory review of Claimant's testimony has convinced us that Mr. Vega clearly understood Rule 4004, and his responsibility with regard to Mr. Sanchez' injury. Although Claimant's command of English occasionally “deserted” him, he stated that he had reported injuries on prior occasions, and had he been “told” to do so, he would have reported Mr. Sanchez injury as well.

Finally, we note that Carrier's “window of opportunity” regarding the activation of Claimant's deferred suspension, has expired. Claimant was not required to observe the suspension, nor will he be required to serve the suspension. The imposition of the 15 day deferred suspension for Claimant's proven violation of Rule 4004, however, was

Form 1
Page 5

Award No. 31923
Docket No. MW-32625
97-3-95-3-553

not unjustified, unreasonable, disparate or otherwise inappropriate disciplinary action.
Based on the foregoing, this claim is 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 4th day of March 1997.