

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31992
Docket No. MW-32518
97-3-95-3-426**

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Extra Gang Laborer V. L. Jackson for alleged violation of Rules I, 621 and 4004 of Form 7908, Safety, Radio and General Rules for All Employees, in connection with the failure to file an accident report until February 28, 1994, was unwarranted and in violation of the Agreement (System File D-211/940348).**
- (2) As a consequence of the violation referred to in Part (1) above, the letter of reprimand and the March 11, 1994 notice of charges shall be expunged from the Claimant's personal record."**

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.

The Claimant was working on his assignment as Extra Gang Laborer on January 24, 1994, when he felt a soreness in his back. He reported the injury to General Foreman R.S. Decker, Jr., who transported him to Huntington, Oregon, where the Claimant met with Mr. George Altenburg, Manager of Track Programs who gave the Claimant an accident report to fill out. In discussion with Mr. Altenburg, the Claimant suggested that the January 24, 1994, incident and resulting pain may relate to a prior injury that he had sustained over a year ago and which had been bothering him off and on during the past year.

Mr. Altenburg contacted Mr. Rex Fennewald, Director of Track Maintenance and Mr. Don Frazier, the Claim Agent and the Claimant discussed the incident with them by phone. Following the phone conversation, Mr. Altenburg testified that the Claimant tore up the accident report and threw it in the waste basket. Subsequently, the Claimant requested permission to see a doctor and was examined by Dr. Herbert H. Hendricks on February 14, 1994.

Dr. Hendricks advised that the Claimant should refrain from any and all work activities for a period of two weeks. On February 24, 1994, the Claimant was examined again by Dr. Hendricks and underwent an MRI exam which revealed that the Claimant had a herniated lumbar disc which would necessitate the Claimant being out of service for at least 60 days.

The medical findings of Dr. Hendricks were reported to Mr. Stan Fedderhoff, Claim Agent, who instructed the Claimant to fill out an injury accident report. The Claimant filed the personal injury accident report on February 28, 1994.

Subsequently, on March 11, 1994, the Claimant received a notice to appear for an Investigation on March 21, 1994. The notice stated in part as follows:

"Please report to the office of Manager of Track Programs, LaGrande, Oregon on Monday, March 21, 1994 at 10:00 am PST, for investigation and hearing to develop the facts and determine your

responsibility, if any, relating to an incident on January 24, 1994 at 10:30 am PST at M.P. 387.3 near Huntington, Oregon, where you allegedly sustained an injury to yourself when pushing on a lining bar. You turned in an accident report on February 28, 1994 which conflicts with the original reports given on January 24, 1994 at Huntington, Oregon resulting in possible violation of General Notice and General Rules A, I, 621, 4004, of 'Form 7908, Safety, Radio and General Rules for All Employees, Revised October 1989'

The investigation and hearing will be conducted in conformity with Rule 48 of the current Agreement between the Company and the BMWE, and you are entitled to representation as provided in that rule.

You may provide such witnesses as you desire at your own expense."

The Investigation was postponed until March 28, 1994.

Following the Investigation the Claimant received a letter dated April 15, 1994, from Mr. J. C. Flynn, Manager Track Maintenance which read in part as follows:

"This letter is in reference to investigation and hearing held in LaGrande, Oregon, on Monday, March 28, 1994. After carefully considering the evidence adduced at the hearing I have determined that the following charges against you have been sustained:

While you were employed as an Extra Gang Laborer, near Huntington, Oregon, you sustained a personal injury on January 24, 1994 at approximately 10:30 am at MP 387.3 while applying rail clips to concrete ties. You did not file an accident report until February 28, 1994.

Your actions and your failure to report the accident in a timely manner are in violation of Rules I, 621 and 4004 of 'Form 7908, Safety Radio and General Rules for All Employees, Revised October 1989'. Therefore, this letter of reprimand will be entered into your personal record.

I would like to take this opportunity to remind you that as a Union Pacific employee it is your responsibility to comply with and obey all prescribed rules and regulations governing duties, deportment and safety for all employees. In order to ensure your continued employment with this Company it is your responsibility to observe all rules which in any way affect your duties."

The claim involved in this dispute was progressed by the Organization in behalf of the Claimant up to and including the highest officer of the Carrier without a satisfactory resolution.

During the handling of the dispute on the property, the Organization contended that the Claimant was denied due process as the charge letter was not precise and additionally the Carrier violated Rule 48(a) by holding the Investigation more than 30 days after the occurrence. The Organization's position is that the occurrence date was January 24, 1994.

With respect to the charge that the letter of March 11, 1994, was not precise, we cannot agree.

The letter of March 11, 1994, is quite clear as to the purpose of the Investigation.

Additionally, there is no basis for the Organization's charge that the Investigation was not held within the time frame of Rule 48(a).

The Claimant's action surrounding the January 24, 1994, incident reveal uncertainty as to whether he hurt his back on January 24, 1994, or was it a recurrence of an injury sustained in April of 1992.

While subsequent events and examinations did reveal that the Claimant may have sustained an injury on January 24, 1994, the first official record was the injury report filed by the Claimant on February 28, 1994.

The sequence of events that took place from January 24, 1994, until February 28, 1994, clearly reveal that the responsible Carrier officials were making every effort to accommodate the Claimant on his and their concerns for what happened on January 24, 1994. The Claimant did contact his supervisor and was advised to file a personal injury

report. The Claimant filed a personal injury report, however, it was the Claimant's personal assessment of the January 24, 1994, incident that played a most important role in this dispute. The Claimant stated to his immediate supervisor that it was possible that the pain he experienced on January 24, 1994, could have been a recurrence of an injury sustained in 1992.

The record shows that a phone conversation between the Claimant and other Carrier officials on January 24, 1994, resulted in their acquiescing with his account of what may have happened on January 24, 1994.

It was the Claimant who engaged in the phone conversation with Mr. W. R. Fennewald, Director of Track Maintenance and Mr. D. Frazier, Claim Agent, and it was the Claimant who tore up the personal injury report that he had previously filled out.

If there was any question or uncertainty on the part of the Claimant as to his condition, he should have let the personal injury report he had filed on January 24, 1994, remain intact. The fact that he did not was not the fault of the Carrier officials involved in this particular phase of the dispute.

Accordingly, there is no basis for the Organization's position that January 24, 1994, was a critical point in the application of Rule 48(a) and the Carrier's violation of said rule.

With respect to the merits of the dispute, the Claimant must bear responsibility for the role he played in the sequence of events that occurred between January 24, 1994, and February 28, 1994.

The Claimant's initial assessment was proven wrong and the record reveals that he erred in protecting his own interests when he tore up the January 24, 1994, personal injury report. No one forced him to tear it up. He could have let it stand but chose to tear it up.

Accordingly, there is basis for the Carrier's charge against the Claimant and the discipline assessed of a letter of reprimand placed on his record is not unreasonable, excessive or capricious.

Based on the foregoing, it is the decision of this Board that 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 6th day of May 1997.