

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32406
Docket No. MW-32866
98-3-96-3-199**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [entry of censure and five (5) day suspension] imposed upon Laborer S. J. Susinka for alleged ‘ . . . violation of Rules 1.1.3 and 1.10 . . . in connection with your failure to promptly and properly report an alleged personal injury that occurred at approximately 10:30 a.m. on September 15, 1994, and for allegedly being careless for your own safety and the safety of others by not reporting defective door on BNX 63-0044, tie remover and inserter, and for absenting yourself from duty without proper authority on September 20 and 21, 1994, while assigned as machine operator on TP24, small tie gang, at Earlville, Illinois ***’ was unwarranted, without just and sufficient cause and on the basis of unproven charges (System File C-95-S090-2/MWA 95-02-14AA).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered 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 received a five day suspension as the result of an Investigation held on October 4, 1994 for allegedly not promptly reporting his injury, not reporting the door on the tie remover-injector as needing repair, and not notifying his Foreman when requesting time off that he had been injured while on duty.

According to the Claimant, he felt a pain in his lower back while opening the door on the tie remover-injector he was operating on Thursday, September 15, 1994. He did not report this injury. Claimant completed his shift on September 15. He testified he worked the next day and that the pain got uncomfortable.

On Tuesday, September 20, Claimant did not report to work but notified his Supervisor he would not be able to work that day because he was "sore." Claimant did not report his September 15 accident on September 20. On September 21, Claimant notified his Supervisor he would be unable to work and attributed his absence to his September 15 injury. Later on September 21, Claimant called the Roadmaster, informed him of his back injury on September 15, sought and received medical attention and filled out the required personal injury report. Fredrickson inspected the tie remover-injector Claimant had operated on September 15 and discovered the track holding the door had broken.

Carrier has a Rule requiring an employee who suffers an on-the-job injury to report that injury to management immediately, determine if medical assistance is needed (if so, then seek such assistance) and fill out a Personal Injury Report. There are several good business reasons for this rule -- to enable the injured employee to receive medical care; to correct any condition that may have caused the injury; to prevent the aggravation of injuries; to permit the Carrier to immediately investigate the incident; and to limit the Carrier's potential liability exposure.

There is unrefuted evidence that the injury Claimant suffered on September 15 was not reported that day and was not reported until September 21. Claimant had other opportunities to report the injury each day he worked between September 15 and 21. He did not avail himself of those opportunities. Nor did he tell his Supervisor on the morning of September 20 or 21 that his absences those days were due to his injury. Thus, there is substantial evidence that the Claimant was absent without proper authority on September 20 and 21. There is also substantial evidence that Claimant was aware the door on the tie remover-injector was not operating properly, but that he did not report that malfunction to his Supervisors.

The discipline imposed was justified and proper.

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 21st day of January 1998.