

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32498
Docket No. MW-32687
98-3-95-3-631

The Third Division consisted of the regular members and in addition Referee Hyman Cohen 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 (mark of censure) imposed upon the Machine Operator G. D. Rollings for alleged violation of Rules 567 and 589 in connection with an injury he sustained on April 14, 1994 was unwarranted, on the basis of unproven charges and in violation of the Agreement (System File S-P-530-W/MWB 94-10-05AB).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's 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.

However, in filling out his personal injury report on April 17 he described how the incident occurred by stating that he "thought he had his foot on the rail after which he stated that he "did not" have his foot on the anchor. His personal injury report is at variance with his testimony in which he stated that his foot was on the anchor when the incident took place. The Claimant acknowledged that the description of the incident set forth in his personal injury report was "correct." Since the Claimant failed to comply with the appropriate procedure in removing rail anchors, the Grievant failed to exercise due care to prevent an injury to himself, in violation of Rule 567.

Turning to the Claimant's failure to report the personal injury in a timely manner, he admitted that at the time of the occurrence, he "felt a discomfort" but no pain. He worked the following day, on April 15, without incident. However, on Saturday, April 16, he noticed that his foot was swollen. On Monday, April 18, the Claimant first notified the Carrier of his injury and filled out a personal injury report.

Rule 589 clearly imposes an obligation on an employee to complete a personal injury report before the end of his tour of duty. In referring to a similarly worded Rule of another Carrier, this Board, in Third Division Award 23484, observed:

"... The Carrier must strictly enforce Rule 1110 to enable the Carrier to allow injured employees to receive medical care to mitigate its liability exposure should the employee file a claim against the Carrier, to correct any condition causing the injury and to permit the Carrier to immediately investigate the incident. Third Division Award No. 19298. . . ."

Clearly, the Claimant violated Rule 589. Although the Claimant worked the day after the incident in question, despite the discomfort he felt at the time of the occurrence, it would be unwise to ignore his indifferent and careless behavior which could have aggravated the injury. See, e.g., Third Division Award 24031.

Before concluding this decision, the Organization has raised a procedural issue which must be addressed. The Organization contends that the Hearing Officer refused to permit the Claimant's Foreman to testify with respect to the Claimant's work habits, and his concern about safety. The Claimant was the only witness to the incident giving rise to his injury on April 14. The specific events of that day are relevant in this dispute. As he stated in his personal injury report, he "thought" he "had [his] foot on anchor, but did not" which is contrary to his training and the customary method of "knocking off"

Following an Investigation, the Carrier notified the Claimant that he had violated Rules 567 and 589 of the Carrier's Safety Rules and General Rules. Rule 567, in relevant part provides that employees are required not to "incur risk which can be avoided by exercise of care and judgment and they are required to exercise care to prevent injury to themselves and others." Rule 589 in relevant part states that an employee is required to fill out a personal injury report before the end of his tour of duty. The Claimant received a mark of censure for violation of Rules 567 and 589.

On April 14, 1994 the Claimant and his gang were engaged in work near Kelso, Washington. While removing rail anchors, he described how he was injured:

"I had my foot laid up on an anchor, knocked it off with a 12-pound sledge, like we're supposed to be doing and it bounced off, come back, hit the side of my foot and that was it."

The Claimant did not notify his Foreman or any other Supervisor of the incident and he continued to perform his assigned tasks. The following morning, on April 15, he reported for duty and worked the entire day without incident.

On Saturday, April 16, the Claimant said that he first became aware of injury to his foot when he found it difficult to put his shoe on because his foot was swollen. The following day, on Sunday, April 17, he sought medical attention and found out that he had suffered a broken bone in his right foot.

On Monday, April 18, 1994, the Claimant reported for work and informed Foreman Dalton and Roadmaster Mesford of his injury. He also filed a personal injury report with the Carrier on that date.

Based upon the record, it is the Board's judgment that the claim must be denied. The Claimant said that while he was engaged in knocking off rail anchors on April 14, 1994 there was hydraulic oil in and around the area. Although he first stated that the spill of hydraulic oil can cause an unsafe condition, he acknowledged that it "was an every day occasion" to work "around . . . machines" that have a hydraulic leak. In light of the "every day" circumstances, it was not an unsafe practice to remove the anchors.

The Claimant stated that when the injury occurred he had his foot on the anchor which is consistent with his training and the common method of removing rail anchors.

the rail anchors. In light of the Claimant's admission of failing to comply with the proper method of removing rail anchors, the testimony of the Claimant's Foreman with respect to the general nature of the Claimant's concern for safety, while at work, is irrelevant.

The Carrier's discipline of censure for violation of Rules 567 and 589 cannot be considered arbitrary, discriminatory, or excessive. The Board finds that the Carrier's discipline of the Claimant is not to be disturbed.

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 25th day of March 1998.