

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32756
Docket No. MW-33822
98-3-97-3-294**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The alleged Level 2 discipline resulting in the assessment of a Level 4 discipline assessed Foreman E. D. Corrill for his alleged late reporting of an injury to another employe which occurred on August 25, 1995 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File D-239/960252).**
- (2) As a consequence of the afore-stated violation, Track Foreman E. D. Corrill shall be returned to service and compensated for all wage loss suffered."**

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.

At the time this dispute arose, Claimant was serving as Foreman on a section gang at Council Bluffs, Iowa. On Friday, August 25, 1995, Track Laborer B. S. Sanchez, working under Claimant's supervision, suffered a back injury while removing a switch point protective cover from the back of a truck. In the apparent belief that the injury was not serious, Sanchez did not report it.

On Monday morning, August 28, having experienced discomfort over the weekend, Sanchez advised Claimant that "his back was sore and that he had done it when he threw that [point protector] plate off . . . Friday afternoon." Claimant asked if he wanted to make out a personal injury report, but Sanchez declined, indicating that he preferred to work through the problem.

On Wednesday, August 30, Sanchez "pulled something again . . . I felt it snap" while working a lining bar. He rested for "five or ten minutes" in a truck, "didn't work that hard the rest of the day," and again did not report the incident.

On Thursday, August 31, Sanchez was assigned to various tasks requiring bending, including the setting of spark plugs and driving spikes with a hydraulic spiker. He went home that evening, and his back "tightened up . . . Friday morning I couldn't . . . work because it was hurting." Sanchez informed Claimant of his condition and was advised to fill out an injury report. As the two men prepared to accomplish that, Manager Track Maintenance Zimmerling showed up. Sanchez explained the situation, and Zimmerling assisted with completion of an injury report and medical treatment for Sanchez.

After completing its Investigation, Carrier assessed the 30 day suspension at issue here, the severity of which was driven by Claimant's past disciplinary record. In doing so, it cited violation of Carrier's Rule 1.2.5, which reads:

"1.2.5 Reporting

All cases of personal injury while on duty or on company property must be immediately reported to proper manager and the prescribed form completed.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. the injured employee must also complete the prescribed written form before returning to service."

As an initial matter, the Organization asserts several procedural challenges to Carrier's action, including allegations that the charges were not provided to its General Chairman; that Claimant was not provided 15 days to accept or reject the discipline offered; that the letter of charges was not sufficiently precise; that the Investigation was not held until three months after the Organization sought postponement; and that the transcript of the Investigation proceedings contained errors.

The Board has considered those contentions carefully. With respect to each of them, we find as follows: Carrier's correspondence transmitting Notice of Investigation dated December 12 shows a copy to the Organization's General Chairman, and the Organization requested postponement the next day; Claimant, having had a prior disciplinary record, may be fairly found to have waived the full 15 days to consult with his union regarding accepting or rejecting the proposed discipline; the letter of charges is explicit enough to put Claimant clearly on notice with respect to the charges involved; the delay in holding the Investigation Hearing is as well attributable to the Organization as to Carrier; and no material inaccuracies in the transcript of Claimant's Hearing were identified on this record. In sum, we find no reversible error in Carrier's handling of this matter on the property.

Failure to report injuries on a timely basis is a serious offense, one with potential to put employees in peril, as it apparently did here, and the Carrier at risk for exaggerated injury costs. That said, even in the face of Carrier's justifiable concerns, the Board recognizes that a one month suspension is heavy discipline. What complicates this dispute is the fact that, while not directly before this Board, Claimant's past record provides important background music, and it is a depressing score. But for past discipline, the infraction charged may have been considered an isolated lapse in judgment and merited more minor discipline. Claimant, instead of forcing the issue of an accident report when Sanchez approached him on August 28, exercised what he surely believed to be discretion. Listening to Sanchez, he determined that the problem might be a fleeting one. Events later in the week found that decision to be wanting. And when Claimant missed his bet, Carrier held him responsible for a violation of its Rules.

That meant that with a past discipline assessment of a Level 3, his personal record was assessed with a Level 4 penalty requiring 30 days off without pay.

The penalty is a tough one, but we find that there is substantial evidence here to support Carrier's charges. A painstaking reading of this record turns up nothing that might excuse Claimant's failure to order completion of an injury report on August 28, or at a minimum on August 30 when Sanchez was required to rest during the day and "take it easy." If his condition by then was not apparent to Claimant, it should have been. Those circumstances, taken together with the irreconcilable conflict in the testimony of Claimant and Sanchez regarding their discussions of the injury between August 28 and August 31, and the obvious disincentive effect of undercutting the policy violated here, compel the Board to not disturb the penalty imposed and to deny this claim.

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 23rd day of September 1998.