

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33608  
Docket No. MW-33986  
99-3-97-3-511**

**The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(The Kansas City Southern Railway Company (former**  
**( SouthRail Corporation)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (letter of reprimand) imposed upon Mr. W. Brown for alleged violation of General Notice, Rules L, N and H-338, in connection with an incident that occurred on February 12, 1996, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-522 SRL).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be exonerated of all charges in accordance with Rule 33(g) and his record cleared of all reference to this incident.”**

**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.

On February 14, 1996, Claimant Willie Brown was notified to attend a disciplinary hearing on February 21 "... in connection with an incident that occurred on February 12, 1996, at approximately 1100 hours, at Vicksburg, MS., in which you have claimed an alleged injury while working on XG 155 as a Trackman."

The evidence adduced at the investigation established that Claimant reported an injury shortly after 11:00 a.m. on February 12, 1996, stating that he felt pain in his hip while raking ballast with an inverted shovel. Claimant was taken to a medical facility and reported off on a personal day on February 13. He returned to work the following day.

Carrier investigated Claimant's injury report and interviewed coworkers who were present at the time of the occurrence. During the course of its investigation, Claimant's coworker, N. Taylor, stated that he and Claimant had been assigned earlier that morning to load a switch stand into a truck. When Claimant got into the truck, Taylor noticed that Claimant "kind of slumped." Taylor asked Claimant what was the matter, and Claimant replied that "he had caught a catch." Taylor testified that he observed Claimant having difficulty getting out of the truck. Carrier introduced a statement from Taylor given to Carrier Officers which corroborated his oral testimony.

Claimant first denied and then acknowledged that he thought he "might have had a little catch" when he and Taylor were getting into the truck to load the switch stand, but, according to his testimony, he thought it was just a charlie horse and not a reportable injury. Not until he began raking ballast a few hours later did Claimant first notice that he was having a problem with his right hip, he stated.

There were no Rule violations alleged in the Notice of Investigation, but several Rules were read into the record at the conclusion of the investigation, as follows:

**"RULE L. Employees must be alert and attentive in the performance of their duties. They must avoid injury to themselves and others, and observe the condition of tools and equipment used. If a defect is found, defective tool or equipment will be repaired or replaced, and defect reported to the proper officer.**

**RULE N.** Courtesy is required of all employees in their dealings with the public, their subordinates and each other. Employees who are unsafe, careless of others, who are guilty of acts of insubordination, incompetency, wilful neglect of duty, make false reports or statements, concealing facts concerning matters under investigation, or guilty of bringing discredit to the railroad will be subject to dismissal.

**RULE H 338.** Rules cannot be written to cover every possible situation, therefore, certain definite responsibilities rest upon you, namely: A - Protection of yourself."

Following the conclusion of the Investigation, Claimant was notified that a written reprimand had been placed in his personal record for violation of General Notice, Rules L, N and H-338 of the Rules and Regulations of the Maintenance of Way and Signal Department.

After careful review, this Board finds no prejudicial procedural defect and no deprivation of Claimant's contractual due process rights. We find the charges sufficiently precise so as to inform Claimant of the nature of the allegations against him and to permit Claimant to prepare his defense. Claimant knew exactly what was being investigated, the record shows. Neither he nor his representative was surprised by any evidence or testimony of Carrier witnesses. The Organization's arguments in this regard are not convincing and must be rejected.

With respect to the merits, there is substantial evidence in the record to support the Carrier's determination that discipline was warranted. As Carrier correctly points out, on-duty injuries are a matter of great concern for a number of reasons, and it has every right to insist that employees report all injuries as soon as possible. The record of Investigation contains testimony from a coworker which plainly demonstrates that Claimant should have reported his injury at an earlier point in time. Claimant himself eventually admitted that he had indeed experienced an earlier problem or a "catch" with his hip. His prompt reporting to the Carrier of his physical condition could have alleviated a more serious and painful problem later that morning.

As for the penalty imposed, it is clear that the letter of reprimand was not an arbitrary or unreasonable assessment of discipline. The penalty does not exceed the

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latitude Carrier has in assessing punishment and provides no basis for the Board to reverse the determination as made by the Carrier.

**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 16th day of November 1999.**