

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35712  
Docket No. MW-35560  
01-3-99-3-484

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level 2 requiring (1) day of alternate assignment to develop a corrective action plan] imposed upon Mr. G. Seematter under date of May 8, 1998 for allegedly violating Rules 1.1.3, 1.1, 1.2.5 and 41.1 of the General Rules and Responsibilities effective April 10, 1994, in connection with a personal injury report, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File W-9848-152/1138500).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall remove all references of this discipline from Mr. G. Seematter’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.

G. Seematter (Claimant) was working as the Section Foreman of Gang 4804, headquartered at Frankfort, Kansas, under the supervision of Manager of Track Maintenance Suppes and ARASA Supervisor R. Heideman, when this issue arose. Gang 4804 is a three man crew with an assigned workweek of 7:30 A.M. to 4:00 P.M., Monday through Friday, with Saturday and Sunday designated as rest days. Pertinent to this dispute, Gang 4804 included Sectionman W. Myers.

On the morning of March 27, 1998, Myers approached the Claimant and informed him that he wanted to see a doctor that afternoon. It is not disputed that Myers did not inform the Claimant of the reason for the request.

Three days later, on Monday, March 30, 1998, Myers informed the Claimant that he was not able to see the doctor on the previous Friday, and, for a second time, requested that he be permitted to leave to see the doctor. Foreman Seematter acquiesced to the Claimant's request and Myers was permitted to leave at the end of his regular tour. Later that evening, Myers contacted his Foreman to report that the doctor had found two herniated discs. When Myers arrived at work the following morning, March 31, 1998, he belatedly reported that his back injury was work related and had occurred four days prior, on March 26, 1998 while he was pulling spikes. Immediately following Myers' tardy admission, the Claimant contacted Supervisors Heideman and Suppes to advise them of Meyers' injury.

By letter dated April 15, 1998, the Claimant was instructed to appear for a formal Investigation in connection with the following charges:

"While working as a Section Foreman, on March 26, 1998, you allegedly failed to properly report a personal injury, while working at or near MP128, near Sullivan, KS, this is in possible violation of Union Pacific Rules 1.1.3, 1.2.5, 1.1 and 41.1 of the General Rules and Responsibilities, effective April 10, 1994."

The Investigation was held as scheduled on April 21, 1998. Following the close of the Hearing, the Claimant was notified that he had been assessed a Level 2 discipline requiring him to attend one day of alternative assignment to develop a Corrective Action Plan.

The Organization protested the discipline, contending that the Claimant was not afforded a fair and impartial Hearing. The General Chairman further contended that the Claimant had not violated any of the Rules for which he was cited, and that the Carrier was unable to prove otherwise.

Director of Engineering Clark denied the claim, maintaining that:

“As a result of my investigation into the merit of your claim, I can find no reason or grounds to reverse this decision of discipline issued in this case. Examination of the entire transcript as a whole reveals that Mr. Myers requested, on March 27, to visit a doctor. Further testimony indicates that Mr. Seematter failed to inquire as to why Mr. Myers requested the doctor’s visit, failed to properly follow up on a medical condition of an employee under his charge, and failed to notify his supervisor of an unsafe condition. These are clearly in violation of Rule 1.1, 1.1.3, 1.2.5 and 41.1. As foreman in charge of supervising employees, his actions--‘inaction’ in this incident--are not acceptable and are not in compliance with Rules of the Carrier.”

The issue remained unresolved on the property, and is now before the Board for adjudication.

The Rules for which the Claimant was cited state the following:

**“RULE 1.1 SAFETY**

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

**RULE 1.1.3 ACCIDENTS, INJURIES AND DEFECTS**

Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.

**RULE 1.2.5 REPORTING**

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

**41.1 FOREMAN**

**Foremen must:**

**Supervise and engage in all work performed by their gang.**

**Ensure work does not:**

- Result in unsafe track condition**
- Create a hazard to employees working on or near the track**
- Result in a negative environmental impact**

**Make required reports.**

**Call on other foremen for assistance, if necessary.**

**NOTE: The foreman in whose territory the work is being performed is in charge. Foreman must not exceed their allowance of men or overtime unless authorized, or unless there is an emergency."**

A review of the record evidence reveals the following: Sectionman Myers felt "pain" in his lower back shortly after work commenced on Thursday, March 26, 1998. Regardless, Myers continued to perform his assigned work, without comment or complaint, throughout the day on Thursday and Friday and, after two rest days, again on Monday, March 30. And, although Myers requested to see a doctor on the morning of March 27 and again on March 30, he offered no explanation for those requests.

In that connection, by his own admission Myers asserts, without equivocation, that the Claimant did not know about his back injury until late in the evening on

Monday, March 30, and was not informed that the injury was work related until the early hours of Tuesday, March 31.

Based on this record, we find no evidence that the Claimant violated any of the Rules for which he was cited. On each of the dates at issue, Myers reported for work as scheduled, participated in the daily stretching exercises and performed his assigned duties without question or complaint. Clearly, Myers did not exhibit any signs of physical discomfort that would cause the Claimant to question his general health, or the reason for his request(s) to see a doctor.

Based on all of the foregoing, this claim must be sustained. The Carrier is directed to expunge this discipline from the Claimant's personal record.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of September, 2001.