

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35985
Docket No. MW-35910
02-3-99-3-937

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Level 2 Upgrade Discipline Assessment assessed Trackman R.C. Green for his alleged responsibility of failing to report a personal injury sustained on August 7, 1998 in accordance with Union Pacific Rule 1.2.5 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File MW-99-29/1166005 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Trackman R.C. Green shall have the Level 2 Upgrade Discipline Assessment removed from his record and he shall be compensated for ‘ . . . eight (8) hours at his respective straight time rate of pay for attending the investigation on September 29, 1998 and any and all expenses the claimant acquired (sic) to include meals and mileage reporting to Spring, Texas. . . .”

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.

Trackman R. C. Green (Claimant) was assigned to Tie Gang 4168, 6:30 A.M. to 2:30 P.M., Monday through Friday, with Saturday and Sunday designated as rest days. The Claimant worked under the supervision of Track Foreman O. Galloway and Track Supervisor M. Cook.

On August 7, 1998, Gang 4186 was assigned to install ties in the vicinity of Tower 87. Specifically, the Claimant was assigned the job of spike driver. At approximately 10:30 A.M., the Claimant felt a "pain" in his lower back. According to the Claimant, he immediately reported same to Foreman Galloway, informing him that: "It's not severe, but I have pain in my lower back." After a brief respite, the Claimant resumed work. As prearranged, the Claimant ended his work day early on August 7 so that he could attend to personal business.

According to the Claimant, as he drove home, he realized that he had injured his back, and upon arriving at his home, he attempted, without success, to contact Foreman Galloway to report the injury. The Claimant eventually reached the Foreman at approximately 4:30 P.M. the following day. During that conversation, the Claimant told Galloway that he had had to go to the emergency room due to the pain in his back, and requested permission to observe a "Safety Day" the following Monday. On Monday, when Supervisor Cook inquired about the Claimant's whereabouts, Galloway reported that the Claimant had hurt his back and was on "a lot of medication" and unable to work. There is no dispute however, that the Claimant made no effort to contact Supervisor Cook, and did not properly report the incident to the Track Supervisor until August 17, when he submitted a "light duty" slip.

As a result, the Claimant was directed to attend a September 22 Hearing regarding his failure to properly report the August 7 injury. Subsequent to one postponement, the Hearing was conducted on September 29, 1998. On October 15, the Claimant was informed that he had been found guilty of violating Rule 1.2.5, and was assessed a Level 2 Discipline.

The Organization protested the discipline, asserting that:

"It is again our position that past practices show and historically that on the railroad, whether it be the Union Pacific Railroad and especially the former Southern Pacific Railroad, that the foreman is the immediate supervisor on the gang to which he is assigned to, and takes the responsibilities over his men on the gang. In this case, it would be Foreman Galloway."

In that connection, the General Chairman noted that the Claimant tried, on "numerous occasions" on August 7 to contact Foreman Galloway by phone, without success. The Claimant also maintains that he paged his Foreman "several times" on August 7, to no avail. In fact, according to the Claimant, Foreman Galloway did not respond until approximately 4:10 P.M. on August 8, when he returned the Claimant's page(s).

Finally, the Claimant could not immediately complete the requisite accident report(s) "because he was experiencing pain and undergoing treatment," according to the General Chairman, who further noted that the Claimant did complete the report "at his first opportunity."

The Carrier denied the claim contending that the Claimant was afforded a fair and impartial Hearing, and the Claimant's failure to adhere to the parameters set forth in Rule 1.2.5 warranted the assessed discipline.

Rule 1.2.5 REPORTING, sets forth the following:

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

A personal injury that occurs while off duty that will in any way affect employees 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."

Although the Organization maintains that the Claimant did properly report his injury, the record evidence demonstrates that, on August 7, 1998, the Claimant violated Rule 1.2.5 when he failed to promptly report an injury.

It is not disputed that the Claimant reported his "pain" to Track Foreman Galloway. However, Foreman Galloway is not the Claimant's Supervisor, nor is he the "proper manager" to whom the Claimant reports. In that connection, the Claimant did not make any effort to submit the "prescribed written form" until August 17, and only after Supervisor Cook instructed him to do so.

Rule 1.2.5 is clear and unambiguous. The Carrier is entitled to a prompt report, both verbal and written, of any personal injuries that may affect an employee, particularly when the injury occurred on duty. There is no dispute that the Claimant did not properly report the possible on-duty injury to Supervisor Clark, nor did he properly memorialize the information on the "prescribed form" as dictated by Rule 1.2.5. Therefore, this claim must be denied.

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 19th day of March, 2002.