

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40426
Docket No. SG-40898
10-3-NRAB-00003-090211**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of K. G. Johnson, for the discipline assessed expunged and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 68, when it issued the excessive Level 2 discipline against the Claimant without providing a fair and impartial investigation and without meeting its burden of proof in connection with an investigation held on January 5, 2008. Carrier’s File No. 1493531. General Chairman’s File No. S-Investigation-906. BRS File Case No. 14159-UP.”

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.

This matter arises from charges that Claimant K. G. Johnson, while assigned as a Signal Maintainer on Gang No. 2144 at Lake Charles, Louisiana, allegedly failed to immediately report a personal injury.

Specifically, the Carrier alleges that the Claimant sustained an injury on November 17, 2007, but did not report it until three days later on November 20. By letter dated December 4, 2007, the Carrier directed the Claimant to report for an Investigation to be held on December 13, 2007. After repeated postponements, the Hearing was conducted on January 25, 2008. The Carrier thereafter found the Claimant to be in violation of Rule 1.2.5, Reporting, and Rule 1.1.3, Accidents, Injuries and Defects and assessed Level 2 discipline of one day of alternative assignment with pay to develop a corrective action plan.

The Rules relied upon both require an employee to report a personal injury to his Supervisor as quickly as practical after an injury, i.e., when he/she becomes aware of the injury.

The Claimant alleges that the injury occurred on November 17, 2007 when he stepped onto ballast and felt a sharp pain in his foot. He walked around his truck, rested briefly, and eventually the pain dissipated. He continued with his work over the next few days until one morning he felt the same sharp pain as experienced at the time of the incident. He made arrangements to see a doctor on November 19, and the following day was advised that he had sustained an injury. As soon as he received the call from the doctor, he immediately informed his Supervisor of the events that had occurred.

Numerous tribunals have adjudicated cases involving similar violations, and have consistently supported the Carrier's rights to hold employees accountable for prompt reporting of injuries. Special Board of Adjustment No. 279, Award 841 for example, provides, "Timely reporting of injuries is imperative so that Carrier can take steps to remedy unsafe conditions and thus avoid danger to others."

Based on a careful review of the record, the Board finds substantial evidence establishing that the Claimant violated the Rules at issue requiring the prompt

reporting of injuries. The Claimant testified that he was fully aware of his ankle popping on November 17, yet failed to report the injury until three days later. The Claimant had a duty under established Rules to report the injury immediately to the Carrier and failed to do so until three days later, and then only after seeking medical attention.

The level of discipline is in accordance with the Carrier's progressive discipline policy. In light of this conclusion, the Board does not reach the Carrier's alternative argument that the claim should be dismissed because the Organization failed initially to identify a specific Rule allegedly violated by the Carrier in imposing discipline.

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 14th day of May 2010.