

Award No. 19141
Docket No. MW-19192

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The five (5) day suspension imposed upon Extra Gang Foreman E. J. Padgett was improper and without just and sufficient cause. (System File LA-88-X-69/Case 624)

(2) The personal record of the claimant be cleared of said suspension and reimbursement be made for wage loss suffered in accordance with Rule 25(i).

OPINION OF BOARD: On January 6, 1969 a laborer assigned to Claimant's gang sustained an injury. In such cases Rule 39 of the Carrier's Rules is applicable.

"In case of injuries of any kind, to himself or anyone in his employ, or in cases of injuries to others which have not been reported by agents or trainmen, the foreman must immediately make a report by wire to the superintendent, division engineer, supervisor and claim agent, and follow it as soon as possible with a written report to the supervisor, on proper form in duplicate. Foremen are not to exercise their discretion as to what injury is, or is not, important enough to be reported. Injured persons must be given prompt and careful attention. When the services of a surgeon are needed, foremen must call the railroad surgeon if practicable."

Claimant as foreman reported the injury and completed the necessary reports.

Some four days later the injured employee advised that his injury had worsened and that he needed further treatment. This further treatment was provided.

Claimant subsequently received the following notice:

"Please be present at investigation to be held in office of Division Engineer, New Orleans, at 9:30 A.M., Tuesday, January 28, 1969, to determine your responsibility, if any, in connection with your alleged failure to report the fact that a minor personal injury to one

of the members of your gang had developed into a more serious injury than had originally been reported.

Your personal record will be reviewed at this investigation.

You may bring witnesses and representation in your behalf if you so desire." (Emphasis ours.)

An investigation was held and Claimant was found guilty of violating Rule 39. While the judgment of Claimant in not reporting the worsening of the injury may be questioned we cannot agree that it is a violation of Rule 39. There is no evidence in the record that the Claimant failed to comply with Rule 39 of the Carrier's Rules for the Maintenance of Way and Structures.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.