

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22201  
Docket Number CL-22100

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Southern Pacific Transportation Company  
( (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8408) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement and Mrs. L. G. Lowndes' rights thereunder when it assessed her personal record with sixty (60) demerits following investigation at which charge that Rule "M" of its General Rules and Regulations was not sustained; and,

(b) The Southern Pacific Transportation Company shall now be required to remove said sixty (60) demerits from Mrs. L. G. Lowndes' personal record and to clear the record of any reference thereto.

OPINION OF BOARD: On August 11, 1975, Claimant was notified to appear at a formal investigation concerning an allegation that she had failed to report "without delay...a personal injury allegedly sustained on July 16, 1975."

Subsequent to an investigation, the employe was notified that she had violated Rule M and was assessed sixty demerits.

Rule "M" states:

"Each personal injury suffered by an employee... must be reported without delay to his immediate superior; and written report completely and correctly made must thereafter be promptly mailed to Superintendent."

Although the Claimant concedes that there was a mishap at work on the 16th of July, at the time she did not attach any particular significance to the event, and no report was made until August 5, 1975.

Sometime after July 16, Claimant's legs started to bother her but she attributed the discomfort to varicose veins. On August 4, her surgeon advised that the pain was not from the veins, but from a pinched nerve, and he asked when she had suffered a back injury. According to Claimant, it was not until that point in time that she attached significance to the July 16 incident. She reported the accident on August 5. The forms were returned to her for further information and were resubmitted on August 10.

The Carrier urges that the report was clearly not submitted "promptly" or "without delay." However, the employee denies a violation because:

"...it definitely states personal injury and as I stated, before I had no idea there was an injury until the doctor tole (sic) me so."

Certainly, there are strong and compelling reasons to justify rules such as Rule M; but, nonetheless, it remains incumbent upon Carrier to establish an asserted violation by substantive evidence. We find that Carrier did not meet its burden of proof in this case. There is nothing presented to suggest, in a reasonable manner, that the events, as described by this employee, are incredible, unworthy of belief, or suspicious.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim sustained.

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By Order of Third Division

ATTEST: C. W. Pauline  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.