

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24333
Docket Number MW-24500

William G. Caples, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Ann Arbor Railroad System (Michigan Interstate
Railway Company - Operator)

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

(1) The twenty (20) calendar days of suspension imposed upon Sectionman T. D. Beck for 'alleged failure to properly report an alleged on-duty injury which occurred on January 13, 1981' was without just and sufficient cause.

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant with approximately two and one-half years of service for this Carrier was employed as a section man. He was assigned to Section No. 6 at Cadillac, Michigan and was working under the supervision of Section Foreman Scarboro when the incident involved here occurred.

On January 13, 1981 the Claimant and other members of Section 6 were assigned to remove ice from flange ways at "the Brooks and Perkins track" near Cadillac, Michigan. About 1:00 in the afternoon of that day Claimant felt a tightening of the muscles in his back which he did not mention to anyone at the work place on that day. Later he testified at the inquiry that "I felt at the time it was not serious enough to report to my supervisor at that point and time and hinder my work." He continued to work the rest of the day and worked on the following work day, the 14th. On the 15th the Claimant reported off sick and advised that he was going to see the company doctor. An appointment was made with the company doctor by the foreman, who also reported the accident, examination was made by the company doctor and the Claimant was returned to work on the 16th.

On February 3, 1983 Claimant was asked to report to attend a formal investigation to determine the facts and his responsibility if any for his failure to properly report an alleged injury which occurred to him on January 13, 1981. The company claiming prior to the investigation that the first knowledge they had of an injury was on January 15, 1981. The Claimant was invited to bring witnesses and representatives or both and did in fact do so. At the inquiry was his General Chairman and Vice Chairman - Secretary Treasurer of the Organization. The claim is essentially in two parts. First, was there an accident? Second, if there was an accident, was there a violation of General Safety Rule 1 which provides as follows:

"All personal injuries, no matter how slight, must be reported to the proper supervisory officer on form GA-410-9-78 as soon as practicable after the injury occurs, but in no event before

the employee leaves work that day. Information shown on Form GA-410-9-78 must be complete. Supervisory officer or foreman will see that the report is transmitted to the general office by wire immediately. Obtain immediate first aid or medical attention for all injuries. Failure to make prompt report of injury will result in disciplinary action."

On the 15th of January, Foreman, after talking to the Claimant, did file the report called for under general safety Rule 1.

First we will deal with the number of procedural points put forth by the Organization by stating that a review of the record reveals the Claimant was not denied any substantive procedural rights and that he was afforded a full and fair hearing.

As to whether an accident occurred or not, this Board is mindful of the fact words have different meanings to different people but for the purpose of our deliberations we are bound to standard dictionary definition of accident which is "an event occurring by chance or out of unknown cause" or "an unsuspected happening causing loss or injury which is not due to any fault to misconduct in part of the person injured."

Therefore, we fail to agree with the Claimant's argument that the involuntary contraction of a muscle cannot by any stretch of imagination be construed as an injury. In this case Claimant knew of the spasm when it happened, results lingered with him to the degree that he was unable to work the 15th, the second day after the accident. This in spite of the fact that Claimant testified at the inquiry, "I felt at the time it was not serious enough to report to my supervisors at that point in time and hinder my work."

The question then becomes whether or not it was a violation of Rule 1. This Board agrees with the many citations made by the Organization that to find the Claimant guilty as required by the contractual agreement imposed on the Carrier the burden of proving guilt by substantive evidence of probative value. It seems that the facts are the Claimant made an error of judgment in not reporting the incident. However, the rules calling for reporting of accidents are for the benefit of a group of people, the employe, his fellow workers, the safety of others on the railroad and the public generally. Therefore it is not unreasonable the Carrier should demand the rule as to notice be promptly and properly carried out. It is obvious from this typewritten transcript that an error was made and the injury should have been and was not reported in accordance with the rule. Therefore, we must conclude that the rule was violated.

This brings us to the point of whether or not penalty involved is arbitrary, capricious, unreasonable or unjust. This Board is reluctant in cases to substitute its judgment for the judgment of the Carrier but in this case severity of the discipline of 20 calendar days appears to be too much and the penalty is reduced to 10 calendar days.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of April 1983.