

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26356
Docket Number SG-26598

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri-Kansas-Texas Railroad Company.

On behalf of Signal Maintainer Tim Bennett for rescission of five days actual suspension and compensation for all time lost including holiday pay account of carrier assessed discipline because of his alleged failing to properly report an on-duty injury. Carrier file 2619"

OPINION OF BOARD: On December 2, 1983, the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with his alleged violation of various Carrier Rules related to an injury he had received on November 27, 1983. After the Investigation was held the Claimant was advised that he had been found guilty as charged and he was assessed a 5 day actual suspension.

On the evening of November 27, 1983, at approximately midnight the Claimant was making repairs to a crossing gate at Kirkwood Road, Houston, Texas. When he stepped down from the signal case after making repairs he stepped on a nail on a board and sustained an injury to his foot. The nail punctured the sole of his left shoe. November 27, 1983, was a Sunday. At approximately 8:00 A.M. on the morning of November 28, 1983, the Claimant attempted to call the Waco, Texas signal office to inform the Signal Supervisor of the accident. He was not able to contact the Supervisor at that time but did talk somewhat later with the Carrier's Project Engineer in charge of grade crossing warning systems who requested that the Claimant pick up Sentinel modual cards from various locations on his territory and give them to another employee for updating. At that time the Claimant informed the Project Engineer that he would do that but first he had to get a tetanus shot for having stepped on a nail the previous evening. The Claimant did not inform the Engineer that the injury had been sustained on the job. At 9:00 A.M. on the morning of November 28, 1983, the Claimant also contacted the receptionist at the Carrier's offices and verified a doctor's appointment for 2:00 P.M. on that day. The Claimant subsequently saw a physician. The Claimant then filled out an injury report and left it for the Engineer to bring back to the Signal office in Denison, Texas. The injury report was delivered to Denison on Thursday, December 1, 1983.

Although it may have been more correct for the Claimant to have mailed the injury report to Denison to the Signal Supervisor rather than to have given it to the Engineer to carry there personally, the Board does not find fault with the Claimant per se for having followed this procedure when turning in the report.

According to the date on the report it was filled out on the morning after the accident, which was November 28, 1983. The report was filled out expeditiously. Any culpability on the part of the Claimant must not be focused on how he filled out the accident report, but on whether he could reasonably have avoided an injury. According to his own testimony, the Claimant saw boards laying around the signal case before he started the repairs on the night of November 27th. A reasonable preliminary safety precaution would have been to move the boards prior to starting the repairs. The Claimant did not do that. It also appears possible that the Claimant could have used greater prudence when descending from the signal case after the repairs were finished. On the injury report the Claimant stated that he injured himself while "... walking along right of way and stepped on a board with nails sticking up." In fact, he was not walking along the right of way when the accident happened but he was stepping down from the signal case as noted above. This apparent attempt to disguise on the injury report what really happened, which the Claimant himself corrected later at the Investigation, suggests that the Claimant may have concluded shortly after the accident that he could have avoided injury if he had removed the boards in the first place. On the other hand, the Claimant had to do the repairs in the dark and it appears from the record before the Board that he had taken all other reasonable precautions while doing his job in order to do it safely. He had proper lighting, wore his safety hat, and had on his safety shoes. Given the record as a whole, therefore, it is the conclusion of the Board that a shorter suspension than that assessed the Claimant would have been more reasonable. The 5 day suspension shall be reduced to a 2 day suspension. The Claimant shall be paid all compensation which he lost while off the other 3 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 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

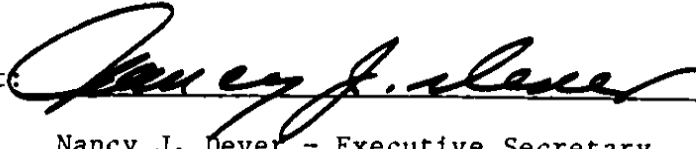
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.