

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29735
Docket No. MW-30280
93-3-92-3-9

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville
(& Nashville Railroad Company)

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

- (1) The five (5) day overhead suspension imposed upon Equipment Operator S. Stone for alleged failure '... to notify your supervisor of your personal injury prior to leaving company property.' on November 26, 1990, was without just and sufficient cause, unwarranted, on the basis of unproven charges and in violation of the Agreement [Carrier's File 12 (91-211) MNN].
- (2) The Claimant's record shall be cleared of the charges leveled against him and of the five (5) day overhead suspension imposed upon him."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

By letter dated December 18, 1990, Carrier's Division Engineer directed Claimant to report for a formal Investigation to determine his responsibility, if any,

"...in connection with your personal injury at Mileport Q-169.2, Chicago Division, Monon Subdivision, Bainbridge, Indiana, at or about 1815 Hrs. CSX Standard Time, on November 26, 1990."

Following the December 27, 1990 Investigation and by letter dated January 23, 1991, the Division Engineer assessed Claimant a five day overhead suspension "in that you failed to notify your supervisor of your personal injury prior to leaving company property."

The record reveals that the Carrier intended to investigate only the Claimant's responsibility in relation to the personal injury and not his alleged failure to report said injury prior to leaving the property. In this connection, Second Division Award 3808 and Third Division Award 20686 are relevant as follows:

AWARD 3808

"...An employe may not be tried on one charge and convicted of another."

AWARD 20686

"There can be no question but that the object of the investigation was to specifically determine who was responsible for the accident in order that those responsible might be properly disciplined. The investigation brought out that the Claimants had violated Rule 25 in a matter apart from the accident under investigation.

Did the notice given contain language sufficiently broad to include the violation for which the Claimants were disciplined? We think not."

As a final matter, the General Chairman, in his closing statement at the Investigation, alleged that the Carrier violated Rule 19 (a) which reads, in pertinent part, as follows:

"An employe in the service sixty (60) calendar days or more will not be disciplined or dismissed without first being given a fair and

impartial hearing before an officer superior
in rank to the officer preferring charges."

As noted above, the Notice of Investigation was issued by the Division Engineer. The Investigation was conducted by the Assistant Division Engineer. Of significance in this regard is Third Division Award 28726 wherein the Board held:

"The only complaint relative to the absence of a stenographer was made by the Representative during his closing statement of the Hearing. The parties may not participate in the proceeding without objection and then complain for the first time at the end of the proceeding."

Accordingly, the Organization's procedural argument is rejected.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.