

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Form 1

Award No. 31549
Docket No. MW-32110
96-3-94-3-505

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

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

- (1) The sixty (60) day suspension imposed upon Laborer C. Carreon for alleged violation of General Rules A, D, I, 600, 604, 607, 4000, 4001, 4008, 4008(A) and 4008(B), in connection with a personal injury sustained on April 1, 1993 and absence on April 6, 1993, was arbitrary, capricious, unwarranted and in violation of the Agreement (System File D-199/930688).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Subsequent to an Investigation, the Claimant was found guilty of a charge that he had failed to follow instructions which resulted in a personal injury on April 1, 1993. and that he was absent from the work place on April 6, 1993 without proper authority. Specifically, the Carrier contends that the Claimant and other members of a tie gang were told that at least four men had to be used to handle switch ties because these were longer and much heavier than a normal tie. The Claimant basically denies that he was so instructed prior to the time when he was injured.

With respect to the second element of the Carrier's charge, the Claimant had been scheduled by the Carrier to report for another doctor's appointment following an initial examination. However, instead of reporting for his appointment, he drove to another doctor's office in California for an examination.

The Organization has strenuously objected to the Carrier's determinations in this dispute. As a threshold matter, it contends the Investigation did not meet recognized standards of fairness.

This Investigation left much to be desired because the same issues (many of which were not relevant) were continuously raised. In turn, this then led into questions and testimony that had little, if any, relevance to the charges that were to be investigated. Nonetheless, we do not find that the proceedings can properly be judged to have been unfair. Moreover, the Claimant clearly was allowed a full opportunity to raise issues, present testimony and to fully defend himself against the charges levied by the Carrier.

With respect to the merits, we find substantial evidence to support the Carrier's charges. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.