

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31993  
Docket No. MW-32764  
97-3-96-3-69**

**The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(The Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [five (5) day suspension] imposed upon Mr. A.W. Lee for alleged violation of General Notice and Rule L of the Maintenance of Way and Signal Department, in connection with an incident that occurred on April 18, 1994 at approximately 1130 hours at Campti, Louisiana in which he sustained a personal injury, was unwarranted, without just and sufficient cause and on the basis of unproven charges (Carrier's File 013.31-496).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reimbursed for all time lost, including overtime and holidays that may have fallen within the period involved here, and his record shall be cleared of the charges leveled against 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 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 were given due notice of hearing thereon.

The Claimant in this dispute, Mr. A. W. Lee, worked as a track laborer for the Carrier and was assigned to Section 362 at Campti, Louisiana. The Claimant worked under the direction and supervision of Section Foreman G. S. Miller on the date of the incident involved in this dispute.

On April 18, 1994, Section 362 was assigned the work of replacing a track frog at the south end of Campti Pass in the vicinity of Mile Post 623.9.

On the day of the incident, Section 362 consisted of track labors R. W. Chamblee, C. Washington, the Claimant A. W. Lee and Section Foreman G. S. Miller.

During the process of replacing the track frog, all of the members of Section 362 were required to use all of the customary track tools and equipment that are required in the usual procedure that is followed.

During the course of the day, the Claimant stated that he had experienced a pull or pain in his back while working on the frog replacement but continued to work until the end of his tour of duty on April 18, 1994. En route to his home, the Claimant experienced further discomfort with his back and on arriving home contacted Section Foreman Miller to alert him of his condition and seek advice as to what he should do. He was advised by Section Foreman Miller to contact Ms. L. S. Corley, Administrative Manager Engineering, and she would advise him what to do. The Claimant was advised by Ms. Corley that he may not be able to see the Company doctor that evening, but if the pain persisted, he should seek immediate medical attention.

The record shows that the Claimant did seek medical help on the night of April 18, 1994, and subsequently was examined by the Company doctor which resulted in the Claimant being held out of service due to the injury sustained on April 18, 1994.

Subsequently, the Claimant was notified on April 21, 1994, that he should attend a formal Investigation on May 3, 1994, to ascertain the facts and determine his responsibility, if any, in connection with an incident that occurred on April 18, 1994, at

approximately 1130 hours, at Campti, Louisiana, MP623.9 in which he allegedly sustained a personal injury while working as a Track Laborer, in Section 362, Campti, Louisiana.

The Investigation was held on May 3, 1994, at which time all of the principals who were involved in the work assignment of Section 362 on April 18, 1994, testified.

Following the Investigation, the Claimant was notified that he was suspended for five days for violation of the General Notice and Rule L of the Maintenance of Way and Signal Department Rules and Regulations effective October 1, 1993.

A claim was filed by the Organization on behalf of Claimant A. W. Lee and processed through the regular channels on the property up to and including the highest officer of the Carrier who denied the claim on April 6, 1995.

We have reviewed the entire record and transcript of the Investigation and can find no basis of support for the discipline assessed against the Claimant in this dispute.

The record clearly shows that the Claimant worked in concert with his fellow employees on the project they were engaged in on the day of the incident. There is nothing in the transcript testimony of fellow employees and the Claimant that reveals any careless or reckless action that would warrant any assessment of discipline against the Claimant. On realizing that he sustained a possible injury to his back while working with Section 326 on April 18, 1994, he appropriately notified his Foreman and other Carrier officers and followed their instructions to seek necessary medical help. The examination by the emergency room Doctor on the night of April 18, 1994, the day the incident occurred and the subsequent examination by the Company Doctor on the following day confirmed that the Claimant did sustain an injury.

The Carrier's position in this dispute is that the discipline was fully warranted under the facts adduced at the formal Investigation, however, they fail to show what those facts were. A mere assertion that the facts adduced at the Investigation warranted the discipline does not meet the burden of proof necessary to show that the Claimant violated any rule or did not act in a prudent manner in the performance of his duties on April 18, 1994.

We find no basis for the discipline assessed against the Claimant in this dispute and accordingly the claim is sustained in its entirety.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 6th day of May 1997.**