

Award No. 32407
Docket No. MW-32900
98-3-96-3-257

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard System
(Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline assessed Brush Cutter Operator W. E. McGriff for his involvement with an injury he sustained on February 23, 1995 was without just and sufficient cause, based on an unproven charge and in violation of Rule 39 [System File 32(3)(95)/12(95-0562) SSY].**
- (2) As a consequence of the violation referred to in Part (1) above, Brush Cutter Operator W. E. McGriff shall now have:**

"... the letter of charge and all matter relative thereto, including Romaine's letter of April 17, be removed from Mr. McGriff's personal file and he be made whole for all loss suffered as a result of this Carrier's actions."

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.

On February 23, 1995, while working as a Brush Cutter Operator on the Dothan Subdivision, Claimant sustained a personal injury to his finger. He reported the accident, did not seek medical attention and continued to work. On March 8 Claimant requested medical attention. The doctor determined Claimant's finger was fractured and applied a splint. On March 13 the Safety Committee investigated the accident and determined that Claimant may have violated Safety Rules. Claimant was notified on March 21 to attend a formal Investigation on March 29. After that Investigation, Carrier issued Claimant a letter of reprimand for placing his hand in a pinch point position.

Rule 39 requires that whenever charges are preferred against an employee, they will be filed within ten days of the date that management learns of the alleged violation. That was not done in this case. Carrier learned of the accident on February 23, but did not charge the Claimant until 26 days later on March 21. This finding alone is sufficient to sustain the claim. In addition, the record lacks persuasive evidence of guilt.

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 21st day of January 1998.