

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32583  
Docket No. MW-33010  
98-3-96-3-410

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 Louisville and  
( Nashville Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension assessed Machine Operator J. D. Cate for his alleged failure to immediately report a personal injury on June 20, 1995 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement [System File 21 (43) (95) /12 (95-828) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. D. Cate's record shall be cleared of the incident 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 were given due notice of hearing thereon.

Claimant was working as a Machine Operator with a System Production Gang operating a Rail Positioner on June 20, 1995. At the end of his shift, Claimant advised his Supervisor that he had injured his back at about 11:15 A.M. that day. He did not fill out an injury report or request medical attention at the time of the accident or anytime later during his shift. Claimant did fill out a report of injury at his lodging facility that night and the next morning requested and received medical attention. Claimant was on medical leave of absence for several days thereafter.

An Investigation was held as scheduled on July 10, 1995. As a result of that Investigation, it was determined that Claimant failed to immediately report the injury suffered while on duty, as Rule 40 requires. Claimant was assessed a ten day suspension to be served upon return from medical leave of absence on September 27, 1995.

Claimant contends he was not aware he sustained an injury at 11:15 A.M. until after he was assigned duties at 4:00 P.M. which required bending and lifting. After that, Claimant reported the injury. The Organization further contends that the discipline was arbitrary, unwarranted and unjust, and that Claimant was not afforded a fair and impartial Investigation.

The Board finds that the Investigation was fair and impartial; that the injury was a result of the Claimant manually pushing the equipment he was operating; that the evidence proves that he did not immediately report the accident; and that the penalty imposed was appropriate.

### **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 22nd day of May 1998.**