Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37554
Docket No. MW-37722
05-3-03-3-79

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline [five (5) day suspension to be served upon return to work from furlough] imposed upon Mr. J. A. Ackerman under date of February 11, 2002 for alleged violation of General Code of Operating Rules 1.2.5 and 1.2.7 in connection with alleged improper reporting of an injury in connection with an October 17, 2001 incident at St. Paul Yard was arbitrary, capricious and in violation of the Agreement (System File D-75-01-550-07/8-00429 CMP).

(2) As a consequence of the violation referred to in Part (1) above, all reference to this discipline shall now be removed from Mr. J. A. Ackerman's record and he shall be compensated '. . . for all lost wages, including but not limited to all straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, seniority and any and all other benefits to which entitled***'"

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 J. A. Ackerman was hired July 23, 1998, and in 2001, held a B&B Carpenter position. Although permanently assigned to another gang, in October the Claimant was directed to work temporarily with Foreman S. DeJarlais on a remodeling project at the St. Paul Yard office. On October 17, the Claimant was discarding sections of old sheetrock into a chest-high dumpster when he felt "a burn or a tear" in his right shoulder. The Claimant told DeJarlais that something was wrong with his shoulder, but did not submit an injury report to the Carrier.

On October 26, the Claimant was examined by a Dr. Dahlquest, who told the Claimant that he might have a tear in his shoulder and advised him to see his regular doctor. On October 30, the Claimant's regular doctor scheduled an MRI for him, which was performed on November 3. On November 6, the Claimant received the results, which showed that he had a torn rotator cuff. The Claimant had surgery to repair the tear on December 19, 2001.

On November 7, the Claimant filled out a personal injury report and submitted it to the Carrier via facsimile on November 8, 2001.

By letter dated January 7, 2002, the Carrier notified the Claimant that a formal Investigation would be conducted to determine the facts regarding his alleged improper reporting of the October 17, 2001 injury. The Hearing was held on February 1 and by letter dated February 11, 2002, the Carrier assessed the Claimant a five-day suspension (to be served upon the Claimant's return from furlough) for improper submission of an injury report in violation of the Carrier's General Code of Operating Rules 1.2.5 and 1.2.7.

Rule 1.2.5 provides in pertinent part:

> "All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed. . . ."

Rule 1.2.7 provides:

> "Employees must not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations."

The Organization appealed the Carrier's decision, and the Carrier denied the appeal. Failing to reach a satisfactory resolution of the issues on the property, the parties submitted the dispute to the Board for final and binding resolution.

The Organization contends that on October 17, 2001, the Claimant believed that the sensation in his right shoulder was a simple ache or pain associated with the strenuous work that he was performing that day. According to the Organization, the Claimant submitted a personal injury report to the Carrier "at the earliest possible opportunity" as soon as he was informed that he had an actual injury. The Board disagrees. The "earliest possible opportunity" for the Claimant to comply with the requirement of submitting a personal injury report for his October 17 injury was on October 17, after he felt a "burn or . . . tear" in his shoulder while lifting sheetrock into a dumpster.

Rule 1.2.5 is unambiguous in requiring all cases of on-duty personal injury to be not only reported to an appropriate supervisor, but also reported on the Carrier's prescribed personal injury report form, immediately. Not only did the Claimant fail to meet Rule 1.2.5's requirements on October 17, he did not even file a personal injury report after Dr. Dahlquest told him on October 26, 2001 that he might have a tear in his shoulder. Nor did the Claimant file a report with the Carrier after his regular doctor on October 30 scheduled an MRI for him. The Claimant knew he was injured and sought medical treatment for the injury long before he received the MRI results on November 6, 2001. The Claimant had no reason to wait to submit the required injury report until he had an exact diagnosis of the injury, and the Board finds that to do so was impermissible under Rule 1.2.5.

Testifying on his own behalf at the Hearing, the Claimant stated:

> "When I worked for other, the oil refinery where I worked before ... You let your supervisor know immediately what happened, and then you see how it goes. Because they don't want a trail of paper work saying you just, you just had a pulled muscle or something. They say they do, but they don't."

Whatever the situation might have been in his previous employment, the Claimant is now working in the railroad industry, where it is no secret that safety is paramount and employees are well aware that injuries must be promptly reported. There is no exception to Rule 1.2.5 for an injury an employee deems of his own accord to be 'not serious.' All injuries must be reported. The timely reporting of injuries is necessary to allow the Carrier to promptly investigate the circumstances of the injury and correct any unsafe conditions that might exist, as well as to ensure that the injured employee receives proper medical care and that subsequent aggravation of the injury is prevented.

Because the five-day suspension appropriately reflected the seriousness of the Rule violation and the length of the Claimant's tenure, the Board finds that the five-day suspension was not unduly harsh or excessive.

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 20th day of July 2005.