

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40093
Docket No. MW-40200
09-3-NRAB-00003-070417
(07-3-417)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 [four (4) 10 hour day suspension effective Monday, August 28, 2006 through Thursday, August 31, 2006] imposed upon Mr. D. Shores for alleged violation of GCOR Rule 1.6 Conduct and Rule 1.2.5 Reporting, in connection with personal injury report on June 29, 2006, was arbitrary, capricious, excessive and in violation of the Agreement. (System File D-19-06-550-05/8-00496 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, this discipline shall be removed from Mr. D. Shores' record and he shall be compensated for any and all lost wages and have all rights and benefits restored that may have been lost as a result of this suspension.”

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.

By letter dated July 16, 2006, the Claimant was notified to attend an Investigation in connection with "an alleged injury which you have stated occurred on Thursday, April 20, 2006, however, not reported until Thursday, June 29, 2006," in violation of the General Code of Operating Rule No. 1.6 Conduct, Rule No. 1.2.5 Reporting and other Carrier Rules and policies. After several postponements, a Hearing was held on July 24, 2006. The Carrier subsequently determined that the Claimant was guilty of the charges and issued the Claimant a four ten-hour day suspension.

The record shows that, on April 12, 2006, the Claimant was working as an Assistant Foreman on the Paynesville Subdivision around Brooten, Minnesota. According to the Claimant's testimony, he was walking down the track when he stepped on a tie and extended his knee backwards. The Claimant stated that he felt some discomfort and thought it would go away. He did not report the injury at that time.

On June 23, 2006, the Carrier's Claims Department received a bill from a medical clinic which stated that the Claimant had received medical attention on April 28, 2006 for an injury that occurred on April 23, 2006. The Claimant listed an injury to his left knee while walking on uneven ballast.

The information was forwarded to W. Scott, Coordinator for Track Programs and Equipment, who spoke with the Claimant on June 28, 2006. The Claimant was performing his work duties at the time and stated that he sustained an injury sometime in April 2006, but he could not recall the specific date. Scott asked why the Claimant had not reported the injury and the Claimant responded

that he did not know he was hurt. When asked if he told his supervisor about the injury, the Claimant stated that he was injured before his supervisor, F. Goytowski, started on his position. The Claimant further stated that he did not report the injury to Foreman J. Gange. However, in the Claimant's view, Foreman Gange knew or should have known about the injury because the Claimant was limping.

Scott advised the Claimant to fill out an injury report. The Claimant testified that he did not have a calendar or timetable when he filled out the report, so he estimated that the incident occurred on April 20, 2006.

In further testimony, the Claimant stated that he attended an orientation meeting in March 2006, at which time injury reporting was discussed. Based on the information provided at the meeting, it was the Claimant's understanding that an injury report did not have to be completed immediately so long as supervision knew about the injury. The Claimant testified that he informed Foreman Gange about the injury to his knee.

The Claimant also testified that he went to the doctor on April 28, 2006 to have his knee examined. He was told to ice the knee. The Claimant stated that he did not fill out a report at that time because he was advised the injury would just go away. In later testimony, however, the Claimant admitted that the doctor placed him on restrictions and issued a prescription during that April 28, 2006 office visit.

The Carrier witnesses refuted the Claimant's testimony on several salient points. Foreman Gange testified that the Claimant never informed him about a work-related injury. In addition, the Carrier witnesses emphasized that employees are required to report all work injuries and they must fill out the required injury report.

The Rules pertinent hereto provide as follows:

"General Code of Operating Rules

1.6 Conduct

Employees must not be:

- 1. Careless of the safety of themselves or others.**
- 2. Negligent.**
- 3. Insubordinate.**
- 4. Dishonest.**
- 5. Immoral.**
- 6. Quarrelsome.**
- Or**
- 7. Discourteous.**

Rule 1.2.5 Reporting

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.

A personal injury that occurs while off duty that will in any way affect the employee performance of duties must be reported to the proper manager as soon as possible. The injured employees must also complete the prescribed written form before returning to service.

If an employee receives a medical diagnosis of occupational illness, the employee must report it immediately to the proper manager.”

The Carrier contends that the evidence developed at the Hearing supports a finding that the Claimant violated the above-quoted Rules as charged. The Carrier asserts that the Claimant had been instructed to report any work related injury and to submit a written report immediately following the injury. He did not do so. The Claimant’s offense was serious and the penalty assessed was neither arbitrary nor unreasonable given the nature of the infraction.

The Organization argues that the discipline should be overturned on procedural and substantive grounds. In the Organization’s view, the Claimant was

denied a fair and impartial Hearing. Furthermore, it is argued that the Carrier failed to meet its burden of proving that the Claimant violated any Rules regarding the reporting of injuries. To the Organization, the record is clear that Carrier supervision was aware of the Claimant's knee problem yet failed to instruct him to complete the injury form. Because the Carrier was aware of the situation, the Claimant should not bear the full responsibility for the delay in submitting the injury forms. Finally, the Organization asserts that the discipline imposed was overly harsh and excessive. For more than 14 years, the Claimant has had an exemplary work record. The Carrier did not take this mitigating factor into consideration when assessing discipline, the Organization maintains.

After careful study of the record in its entirety, the Board concludes that the Organization's arguments are unpersuasive. We find no evidence to support the assertion that the Claimant's Agreement due process rights were compromised or that there were any procedural defects in the handling of this case. Moreover, the Organization raised new arguments and contentions on this subject in its Submission which were not presented during on-property handling. It is well-established that such issues may not be considered by the Board.

On the merits, it is clear that the Organization's position has merit only if we find that the Hearing Officer's credibility determinations were without proper foundation. No such conclusion is warranted. There is ample evidence on the record to show that the Hearing Officer correctly credited the testimony of Carrier witnesses over the Claimant, whose account was contradictory, inconsistent, and implausible.

Accordingly, there is substantial evidence to support the charges. The Claimant admittedly hyper-extended his knee while walking on the track on April 12, 2006. He was required to report the injury to the Carrier and fill out an injury report. If he had any doubt that he had suffered an injury, by April 28, 2006 he surely knew that he had a work related problem with his knee because he sought medical attention for the injury. Notwithstanding his assertions to the contrary, the Claimant failed to tell management about the injury until he was confronted about the matter by the Coordinator for Track Programs and Equipment on June 28, 2006. The Claimant had received training concerning reporting requirements and

there was no valid justification for his failure to comply with this important Carrier Rule.

Failure to promptly report work related injuries is a serious offense which properly subjects an employee to discipline. Despite the Claimant's clean record, we must hold that the Carrier did not act in an arbitrary, capricious or unreasonable manner when it imposed a four ten-hour day suspension for the misconduct proven in the instant case. 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 19th day of November 2009.