

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40094
Docket No. MW-40327
09-3-NRAB-00003-080135**

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] assessed Super Truck Operator Julie Aberle in connection with the alleged injury she reported on May 2, 2006 was without just and sufficient cause, arbitrary, capricious, heavy-handed and unsubstantiated (System File D-06-550-004/8-00493).**
- (2) Super Truck Operator Julie Aberle shall now be made “* * * whole as if he (sic) were never disciplined and that his (sic) record be expunged of any and all allegations of misconduct.”**

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.

At all times relevant, the Claimant was assigned as a Super Truck Operator under the supervision of Track Maintenance Supervisor K. Rohde. On May 26, the Claimant was issued a five-day suspension following an Investigation on May 17 in connection with an alleged injury reported to the Carrier on May 2, 2006.

By letter dated July 25, 2006, the Organization wrote to the Carrier appealing the discipline. The letter was sent by certified mail on that same date and received by the Carrier on July 27.

The evidence presented at the Investigation has been carefully reviewed. According to the Claimant, she was using a spike maul on March 10, 2006 when she felt a “twinge” in her shoulder. Thinking that the pain would resolve itself, the Claimant continued to perform her regularly assigned duties.

The record shows that the pain continued to worsen until the Claimant decided to go to the emergency room on Friday, April 28, 2006, approximately six weeks later. The Claimant’s arm was placed in a sling and she was prescribed medication. She was released for work with a “no heavy lifting” restriction and advised to see her physician for continued treatment. When the Claimant returned to work on Tuesday, May 2, 2006 - her next regularly scheduled work day - she reported the incident to Supervisor Rohde and filled out the required injury form.

Before reaching the merits of this case, it is necessary to dispose of several preliminary matters. First, the Carrier argues that because it did not receive the initial claim in hand until July 27, 2006, it was “presented” outside the time limits set forth in Paragraph (a) of Rule 21.1, which states in pertinent part: “All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based.” Based on well-established precedent, however the date a claim is “presented” is when it is mailed. See, e.g., Third Division Awards 24440 and 32550. In this case, the claim before the Board was postmarked on July 25, 2006 for certified delivery and it was effectively presented at that time, within the 60 day time limit. The Carrier’s threshold timeliness argument is therefore rejected.

The preliminary issue raised by the Organization is similarly unpersuasive. Notwithstanding the Organization's contentions to the contrary, we find that the Claimant was afforded due process consistent with just cause and the provisions of the Agreement. It is true that there were inaudible portions of the Investigation transcript, but they were minor in nature and did not preclude a thorough and complete review of the record. In addition, we find that the charges were sufficiently specific so as to apprise the Claimant and the Organization of the nature of the charges directed against her and to allow for a vigorous defense. The Board is satisfied that the Claimant was afforded a fair and impartial Investigation and that no procedural rights were abridged during the handling of this claim.

Turning to the merits, the Organization asserts that the Claimant did not realize that she had a reportable injury until she went to the emergency room on April 28, 2006. Based on the Claimant's testimony, however, it is clear that she knew she suffered an injury at the time that it occurred. She admitted that the pain she experienced was different from the usual aches and soreness that can occur when job duties require a great deal of physical labor. By her own account, the pain in her shoulder increased to the point that she was unable to sleep for weeks and finally felt it was necessary to go to the emergency room to seek treatment. Even then, she waited until May 2, 2006 to report the injury to supervision. Rule 1.2.5 Reporting states, in relevant 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." The Claimant did not comply with the Rule and she was properly subject to discipline.

Prompt reporting of injuries is important for many reasons. An employee who suffers an on-the-job injury must notify management immediately so that medical assistance can be provided if necessary; to correct any condition that may have caused the injury; to prevent aggravation of the injury and to permit the Carrier to timely investigate the incident and determine its potential exposure to liability.

Under the circumstances presented, the Carrier met its burden of proof and established that a five-day suspension was proper and fully warranted. Accordingly, this claim must be denied.

**Form 1
Page 4**

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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.