

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No.40096
Docket No. MW-40756
09-3-NRAB-00003-080609**

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 Spiker Operator C. J. Brossart for his reporting in late October, 2005 of an alleged personal injury sustained by you on September 22, 2005 was without just and sufficient cause, arbitrary, capricious, heavy-handed, unsubstantiated and in violation of the Agreement (System File D-05-550-011/8-00491).**
- (2) Spiker Operator C. J. Brossart shall now be made “* * * whole as if he were never disciplined and that his 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 Machine Operator on a Model B Spiker under the supervision of Track Maintenance Supervisor D. Swartz. On February 17, 2006, the Claimant was issued a five-day suspension following an Investigation on January 24 in connection with an alleged injury incurred on September 22, 2005, but not reported to the Carrier until October 2006.

By certified letter dated April 18, 2006, the Organization wrote to the Carrier protesting the discipline. The letter was sent by certified mail on that same date and received by the Carrier on April 20.

The evidence presented at the Investigation has been carefully reviewed. According to the Claimant, he was operating the Model B Spiker on Thursday, September 22, 2005, and afterwards noticed pain in his back and legs. Although he had experienced back pain before, the Claimant testified that this became more serious to the point that he informed supervision the next day, September 23, that he was unable to work. Supervisor Swartz testified, however, that while the Claimant informed him that he was having back pain, he never indicated that it could possibly be due to a work-related injury.

The record shows that the pain continued to worsen until the Claimant decided to go to the emergency room on Sunday, September 25, 2005. The Claimant was given muscle relaxants and anti-inflammatory medication and was directed to see a specialist. On October 13, the Claimant visited the specialist, who informed the Claimant that he had two herniated discs and nerve damage. Surgery was performed on October 14. The Claimant filed an injury report on October 27, 2005.

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 April 20, 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 April 18, 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 him 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 acted in a reasonable fashion and reported the injury as soon as he recovered from the surgical procedure. The Carrier, on the other hand, argues that the Claimant failed to timely report the alleged injury in violation of well established reporting Rules.

The significant point that emerges from the Board’s careful review of the record is that the Claimant knew he suffered an injury on September 22, 2005. He should have reported the on-duty injury to supervision and filled out an injury report; the credible evidence established that he did not do so. By waiting until October 27, 2005 to file an injury report, the Claimant failed to comply with Rule 1.2.5 Reporting, which 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.” His failure to comply with this important Rule properly subjected him to discipline.

Prompt reporting of injuries is critical 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. See, e.g., Third Division Award 38960 and Public Law Board No. 4897, Award 69.

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.

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.