

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 35

AWARD NO. 23

CASE NO. 1354 MW

FILE: K-173-T-80

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The ninety (90) day suspension imposed upon Trackman E. J. Maxwell for allegedly not properly reporting an injury was without just and sufficient cause and wholly disproportionate to such a charge. (Case No. 1354 M of W)
- (2) Trackman E. J. Maxwell shall be compensated for all wage loss suffered during the ninety-day suspension (April 17 to July 15, 1980)."

OPINION OF BOARD

The Claimant was notified to report to an investigation concerning an assertion that he had not properly reported an alleged injury. Subsequent to the investigation, the Carrier imposed a 90 day suspension on the Employee.

The record indicates that the individual had been back to duty for 3 days after having received a medical release concerning a past injury, and he sustained an injury to his side while moving a cross tie. While the record indicates that he did advise one of his co-workers of the injury, he failed to report it to his Foreman or any Company Official that day.

The Claimant conceded, at the investigation, that he did not report the incident at the time because, "I felt

like that it pertained to this injury that I had had previously..." Nonetheless, on the day following the incident, he notified his Foreman and was then examined by a doctor.

Even assuming that the Employee was in violation of the Carrier's rules by failure to report the incident when it occurred, the Organization suggests that a 90 day suspension is totally unwarranted in this type of a situation.

The Carrier insists that the record substantiates a finding that although the Claimant requested permission to see his doctor on the day after the incident, he did not report the incident properly to the Carrier until two days after the injury.

There is no question that the appropriate rule requires that personal injuries must be reported immediately to proper authority, and there is nothing in the record to suggest that the Claimant was not aware of this requirement. Thus, the asserted distinction between an "old injury" and a "new injury" is not a valid distinction to be placed before the Board. Thus, there is no question that the Employee failed to abide by the dictates of the appropriate rule.

Accordingly, it is appropriate for us to determine whether or not a 90 day suspension is unduly harsh in this situation.

Under certain circumstances, we might be inclined to rule that 90 days was an unduly long period of time for failure to report the injury; if, in fact, the record strongly suggested to us that the Employee may not have realized the full import of the injury. But here, we must consider the additional fact in aggravation of the offense, which indicates that the Employee was aware of the severity of the injury - at least to the extent that he sought medical assistance - on March 13, yet he still failed to make an appropriate report until March 14, 1980. Under those circumstances, we are inclined to resist any temptation to lessen the period of the suspension, and we will deny the claim.

FINDINGS

The Board, upon consideration of the entire record, and all of the evidence finds:

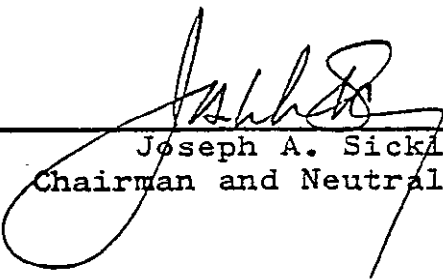
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD


Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



DATE