

PUBLIC LAW BOARD No. 2366

AWARD No. 79

DOCKET No. 95

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM

1. That the claimant, Mr. S. Gaines, was unjustly dismissed from the service of the Illinois Central Gulf Railroad for failure to report an alleged on-duty injury.

2. That the claimant be restored to service with all rights unimpaired and paid for each day he is released by his doctor to return to work.

OPINION OF THE BOARD

In June of 1984 the Claimant was instructed to attend an investigation concerning an allegation that he did not report an asserted injury sustained while on duty. Subsequent to the investigation he was dismissed from service.

A review of the transcript and the record as a whole shows that the Employee claims that he was injured while working on a Friday but, he concedes, he did not notify anyone.

Moreover, testimony of other Employees confirms that he made no indirect complaint about having injured himself.

The Foreman of the gang was not notified until the following Monday because the Employee "... didn't think it was serious." The Claimant stated that he felt certain pain when he slipped on a rock but "just got up and went back to work". In fact, (he asserts) he had suffered a fracture of the leg.

The pertinent rule states that Employees must report promptly to proper authority any injury sustained on duty or on Company property. Further, the rule requires that

notification be made prior to the end of the Employee's tour of duty.

As indicated above, the Employee asserts that he had no immediate realization of the severity of the injury when it was sustained and consequently did not feel compelled to make any notification. Further, the Organization argues that even if a technical violation is found, the punishment of dismissal is too severe.

The Company has set forth evidence to show that this Employee knew full well of the existence of the rule. It also stresses the testimony of record in which the Employee admits that he knew that he had been injured. Accordingly, it is established with certainty that the Employee violated the portion of the rule that requires immediate notification.

The Board has reviewed the record at length and in considering the severity of Carrier's actions, we have presumed that (in fact) the Employee was injured while on Company property and the injury was slight, in his mind, at the time. Nonetheless, the very reason for the rule which mandates timely notification of any injury is apparent in this case. While the Claimant may have felt the injury was slight, it resulted in a bone fracture and the Carrier was subjected to certain liability. There is nothing unreasonable about a Carrier promulgating a rule which assists it in making immediate investigation when liability is involved. Under the circumstances, we find no reason to disregard the long established rule of Referees serving Public Law Boards. We are disinclined to substitute our judgment for that of the Carrier unless circumstances warrant that action.

FINDINGS

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

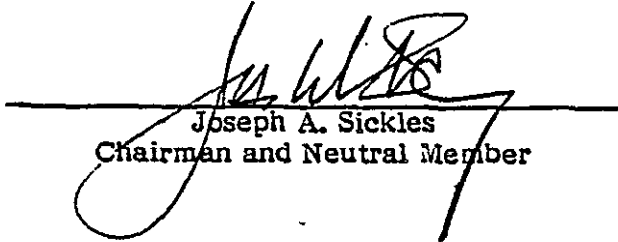
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

AWARD

1. Claim denied.


Joseph A. Sickles
Chairman and Neutral Member


A. S. Gibbins
Carrier Member


H. G. Harper
Organization Member

September 30, 1985
Date