

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 1

CASE NO. 1

<u>PARTIES</u>)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
<u>TO</u>)	and
<u>DISPUTE</u>)	FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when as a result of an investigation conducted August 29, 1979 they suspended Machine Operator R. R. Rael for a fifteen (15) day period between the dates of September 24, and October 8, 1979 inclusive.
2. That the Carrier shall compensate Claimant R. R. Rael for wage loss suffered, including overtime. for the period of time involved in his suspension.

FINDINGS:

By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant Machine Operator R. R. Rael was given a suspension for a fifteen (15) day period between the dates of September 24 and October 8, 1979 "for violation of Rule 2, 3, 4 and Rule 662 of the Burlington Northern Safety Rules in connection with failure to give a factual report of alleged injury on June 21, 1979".

These rules read as follows:

Rule 2: "An employee having any knowledge or information concerning an accident or injury before his tour of duty ends (or as soon thereafter as possible), must complete Form 12504, Report of Personal Injury,

in triplicate, supplying the information required. All copies are to be sent to the superintendent."

- Rule 3: "Accidents, injuries, defects in track, bridges, signals, or any unusual condition which may affect the safe operation of the railroad, must be reported by the quickest available means of communication to the proper authority, and must be confirmed by wire or on required form."
- Rule 4: "Injury of any kind, however minor, must be promptly reported."
- Rule 662: "Employees who withhold information or fail to give factual report of any irregularity, accident, or violation of rules will not be retained in the service."

The following letter from the General Roadmaster to the Chief Engineer (Exhibit No. 4 to the Transcript of Investigation) describes what occurred:

"Concerning injury to R. R. Rael on June 21, 1979 reported to foreman on August 7, 1979. Mr. F. R. Jones and myself interviewed Mr. J. Underwood, gang foreman at Memphis, concerning alledged injury.

Mr. Underwood states that Mr. Rael did not report any incident to him on June 21, 1979. He knew nothing of the alledged injury until Mr. Rael reported it at 6:00 a.m. August 7, 1979. The tie gang was working in the Memphis area on June 21, 1979, and Mr. Rael was operating tie crane on this date.

Mr. F. R. Jones and myself also interviewed on 8-7-79, Mr. Rael concerning his alledged injury. Following was his statement:

'Mr. Rael was operating tie crane on June 21, 1979. At about 10:00 a.m. he threw switch to North spur Newhouse at Memphis, M. P. 251.10 to clear for train. When throwing switch he felt pain in lower abdomen right side. He did not report this to anyone as he thought it would go away. He was by himself and no witnesses present.

Mr. Rael states he did have some pain and noticed swelling during the period 6-21-79 to 8-2-79. He set up an appointment with Dr. Livingston Parker at Alburquerque, New Mexico to see what was wrong with him.'

Mr. Rael was on vacation from July 30, 1979 till August 6, 1979. On August 2, 1979, he went to Dr. Livingston Parker, who said he had a hernia that needed repairing in the near future. Mr. Rael did not report this to foreman as he thought it would be done when he returned to work on 8-6-79. Mr. Rael called Mr. Underwood on 8-6-79 at about 6:00 a.m. and did not work that day due to personal business. He did not say anything at this time as he would do it upon returning to work 8-7-79. On 8-7-79 at 6:00 a.m. he reported to foreman Underwood that he had an injury on June 21, 1979. Mr. Rael is a qualified machine operator and has had the Book of Rules of the Maintenance of Way.

We had Mr. R. R. Rael taken to the company doctor, Dr. H. R. Stevenson, at Memphis, on 8-7-79 to verify his alledged hernia. Dr. Stevenson reports Mr. Rael has a hernia and it will need correction."

The evidence of record conclusively establishes that (1) On June 21, 1979, Claimant felt pain in lower abdomen right side when he threw switch at about 10:00 a.m. to North spur Newhouse at Memphis, M.P. 251.10 to clear for train; (2) Claimant did not report this occurrence until August 7, 1979.

The evidence of record establishes Claimant's violation of Rule 2, 3, 4, and 662 of the Burlington Northern Safety Rules.

The evidence of record further shows that Claimant is familiar with the requirements attendant to the reporting of a personal injury because he had occasions to file report in connection with injuries he received October 5, 1977 and May 4, 1978, both dates prior to the June 21, 1979 incident. (See Carrier's Exhibits Nos. 2 and 3). The evidence of record shows that Claimant was aware of, and successfully passed examination on, the rules here involved. (See Carrier's Exhibit No. 4). Accordingly, in the circumstances of this particular case, there was no prejudice to Claimant's fundamental rights of notice of investigation. He was not denied any substantive procedural rights and he was afforded a full and fair hearing.

Thoughtful persons realize that failure or delay in complying with the cited rules is not a matter of mere technicality. They know that an injury, however minor it may be, if promptly diagnosed and treated, may be healed or cured without the suffering and complications--including death--which might otherwise occur. Also, they know that a prompt reporting of unsafe conditions, including difficult switches, may hasten their correction and prevent avoidable accidents or disasters. Reasonable employees, in their own concern for their own safety in a hazardous occupation, understand the need to comply with safety rules and not to take chances.

As stated in Award Number 19298, Third Division, National Railroad Adjustment Board,

"Prompt reporting of injuries, whether real, suspected, or imaginary is extremely important to the employer because:

1. The employer is entitled to mitigate his damages by having the employee treated promptly, so that an earlier return to work is possible and a valued experienced employee may return to his job.

2. The carrier has a duty to its stockholders and its employees to correct any condition that causes injuries if such a condition may be corrected."

Further, as held in Award Number 22936, Third Division, in a dispute between the instant parties, the Fort Worth and Denver Railway Company and the Brotherhood of Maintenance of Way Employees,

"Just as Rule 2 was not complied with by claimant, neither was Rule 4 nor Rule 662. Given the fact that claimant is in violation or has not met the requirements of these cited rules, carrier has the right to impose discipline. Carrier chose to discharge claimant from service. This Board is mindful of the importance of prompt and complete reporting of accidents on railroad property and of the liability claims that railroads have lodged against them when employees are injured on the job.

With this in mind, the Board can fully understand Carrier's desire to impose a severe penalty on employees who do not comply with safety rules. It is the opinion of this Board that Carrier has not been arbitrary or capricious in this instance. Claimant violated three rules. Since claimant is guilty as charged and Carrier did not act in an arbitrary or capricious manner, this Board sees no reason to modify Carrier's action in any way."

In the instant case, Claimant's violation of the cited rules warrants the discipline of fifteen (15) days' suspension imposed upon him. The Carrier's action was not arbitrary or capricious.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim is denied.

Joseph Lazar
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

S. E. Fleming
S. E. FLEMING, EMPLOYEE MEMBER

B. J. Mason
B. J. MASON, CARRIER MEMBER

DATED: 10-19-81