

PUBLIC LAW BOARD NUMBER 3530

Award Number: 114

Case Number: 114

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, G.L. Walker, P.O. Box 1184, Princeton, WV 24740 and C.M. Lowe, 512 McDowell Avenue, N.W. Roanoke, VA 24016 were assessed 60 day and 90 day suspension respectively for alleged responsibility in connection with collision of Auto Spikers and to promptly report personal injuries. Claim was filed in accordance with Railway Labor Act and agreement provisions. Employees request suspensions be removed from their record and pay for the lost time with seniority and vacation rights unimpaired.

FINDINGS

Claimant Lowe entered the Carrier's service on August 26, 1981.

Claimant Walker entered the Carrier's service on October 2, 1968.

By letters dated July 15, 1988, Claimants were directed to attend a formal investigation on charges that they failed to promptly report the collision of the two spikers they operated and that they failed to promptly report personal injuries, in violation of Rule 1000. The formal investigation was held on August 2, 1988. Claimant Lowe was suspended for 90 days and Claimant Walker was suspended for 60 days.

The issue to be decided in this dispute is whether Claimants were suspended for just cause under the Agreement; and if not, what should the

remedy be.

On July 12, 1988, Claimants were assigned to T&S Production Gang and both were operating spiker machines. Lowe was operating the machine behind Walker. At approximately 3:00 p.m., Lowe collided with Walker. Neither Claimant reported the collision or their injuries on July 12. On July 13, 1988, both Claimants reported the collision and their injuries to Foreman M. S. Shipley. On July 14, 1988, Shipley informed Assistant Roadmaster W. E. Cline of the collision and injuries. Shipley was suspended for 15 days for his part in connection with his handling of this matter.

The Carrier's Rule 1000 provides:

An employee who sustains a personal injury while on duty must report it, before leaving Company premises, to his immediate supervisor or to the employee in charge of the work, who will promptly report the facts through channels.

If an employee at any time marks off or obtains medical attention for an on-duty injury or occupation illness, he must promptly notify his supervisor.

Other Carrier employees and managerial personnel examined the spikers in question on July 14, 1988 and determined that there were no mechanical defects or malfunctions present in the spikers including their brakes. Testimony at the investigation by Claimants and others indicated that the spikers had had difficulty with their brakes as far back as 1987.

Claimants were held out of service pending the investigation.

The position of the Carrier is that Claimants were justly suspended. The Carrier contends that Claimants admit they did not report either the

collision or their injuries on July 12. The Carrier maintains that the evidence in the record demonstrates that Claimants knew of both the collision and their injuries (if they indeed occurred) immediately and deliberately failed to report them as required. This failure constitutes a clear violation of Rule 1000. Further, the Carrier contends that the reporting of damage and injuries is essential to the operation of a safe workplace and that both the collision and the failure to report the results were serious breaches of the Carrier's rules. These breaches justified holding Claimants out of service pending the investigation. Finally, the Carrier contends that the suspensions were warranted under the circumstances, citing several awards to show that each was proportional to the offense.

The position of the Organization is that Claimants were suspended without just cause, arguing that Claimants were not at fault in the collision because the brakes were not operating properly. It contends that the brakes on Lowe's spiker did not apply as quickly or securely as they should. The Organization points out that injuries such as Claimants' are not always readily apparent and sometimes develop over time. Therefore, the Organization contends, Claimants complied with Rule 1000, in that they reported their injuries as soon as they manifested themselves.

The Organization also contends that the Carrier was not justified in holding Claimants out of service pending the investigation. In essence, the Organization contends that the Carrier is asserting that every violation is a serious or major violation. The Carrier is routinely and improperly holding out of service every employee cited to an investigation.

After review of the entire record, the Board modifies Lowe's and Walker's, suspensions reducing them to 60 and 30 days respectively and directs that their back pay, benefits and seniority be restored for the balance of the period for which they were suspended.

The Carrier has sustained its burden of proving that Claimants were involved in a collision and that they did not report that collision or any related injuries on the day of the collision. There is no question that Claimants failed to report injury until July 13, 1988, at which time they advised their foreman. However, the testimony cited by the Carrier as proving that Claimants knew immediately of their injuries is in fact somewhat inconclusive on that issue. As to the collision, there is no excuse for failing to promptly report this. It is of vital importance that the Carrier learn of the collision promptly so that it can take steps to protect the safety of its personnel and the public regardless of whether the collision resulted from faulty brakes, or any other reason.

While not ignoring the seriousness of the offense committed, the Board finds that the suspensions were not entirely in proportion to Claimants' transgressions. Considering the facts and circumstances of this matter the more appropriate disposition is the reduction of the suspensions.

AWARD

Claim disposed of per Findings herein.

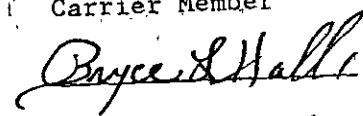
3530-114  
pg 5



Neutral Member



Carrier Member



Organization Member

Date: FEB. 22, 1990