

PUBLIC LAW BOARD NO. 3558

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) SOUTHERN PACIFIC TRANSPORTATION COMPANY
) EASTERN LINES

AWARD

STATEMENT OF CLAIM:

- "1. Carrier violated the effective Agreement when System Track Laborer E. O. Resendez was unjustly suspended from service from November 10, 1986, through November 14, 1986.
2. Claimant Resendez shall now be paid for forty (40) hours at his respective straight time rate of pay and his record cleared of alleged violation of Carrier Rule 806." (MW-86-157)

OPINION OF BOARD:

As a result of charges dated August 29, 1986, hearing eventually held on October 28, 1986 and letter dated November 5, 1986, Claimant, a Track Laborer with approximately eight years of service, was suspended for five days for failing to make a timely personal injury report in accord with Rule 806.

On August 22, 1986, shortly after 10:45 a.m., Claimant hurt his back while operating an air hammer. Claimant reported the incident to Track Foreman L. R. Calais at approximately 11:00 a.m. Calais then asked Claimant to fill out an injury report. Claimant initially declined thinking that the pain would subside and told Calais that he was not sure if he was actually injured. Claimant walked around, felt better and continued working. Calais testified that Claimant told him that "he might have hurt his back" and that his back just might be sore from running the hammer. Further, according to Calais, employees do get sore from running the air hammer for long periods of time and injury reports are not filled out for those instances. Calais also testified that it was also his responsibility as

Track Foreman to complete the appropriate paperwork and notify the proper Carrier officer of the injury. Calais did not do so since Claimant "didn't think there was anything to it."

The injury apparently turned out to be more than mere soreness. According to the Organization, Claimant was examined the following day and was informed that he sprained his lower back. On his next working day, August 25, 1986, Claimant completed the necessary injury report.

The current Rule 806 states:

"All cases of personal injury, while on duty, or on company property must be promptly reported to proper officer on prescribed form."

Prior to October 28, 1985, Rule M required that reporting of injuries and the completion of reports had to be accomplished "prior to completion of tour of duty."

We do not find substantial evidence in the record to support the Carrier's disciplinary action. Under the circumstances presented, we find that Claimant "promptly" reported the injury as required by Rule 806. On the day of the injury, Claimant advised his supervisor of the injury within minutes of its occurrence and on the next working day, after concluding that the injury was more than just soreness, Claimant completed the necessary paperwork. Roadmaster E. L. Alcala testified that if an employee gets sore from work he does not normally do, Alcala does not consider such occurrence an injury. Alcala further testified that "If Mr. Resendez stated to his foreman that he was sore, I think it would be a different situation" A fair reading of Calais' testimony is that Claimant indicated to Calais that he may only have been sore from running the hammer - an explanation that Calais accepted and a situation that Alcala, by his testimony, did not consider to be an injury. Calais' testimony that employees who get sore from running the air hammer do not fill out injury reports further justifies Claimant's initial hesitation to complete an injury report at that time.


Therefore, it appears from this record that at the time of the incident, mere soreness did not require the completion of an injury report and the indications of August 22, 1986

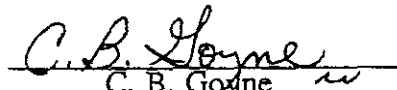
demonstrated that Claimant may only have been sore from running the hammer therefore not requiring the completion of an injury report at that time. When more than soreness was indicated, Claimant "promptly" completed the report and hence, disciplinary action cannot be justified. In light of this conclusion, we find it unnecessary to address the argument raised by the Organization that the change in language concerning reporting requirements from requiring injury reports "prior to completion of tour of duty" to the present requirement of "promptly" completing those reports, relaxes the time period for filing those reports.


The suspension shall therefore be rescinded. However, Claimant's entitlement to compensation for time lost shall be determined by whether he was capable of working during the period of his suspension. If Claimant was unable to work due to the injury (i.e., if he was off immediately prior to and after the period of suspension commencing November 10, 1986 because of the injury), he shall not be compensated for time lost. See Third Division Award 26916 ("However, inasmuch as Claimant missed work after December 19, 1983, as a result of his back injury and was further furloughed in January 1984, the Carrier shall not be required to compensate Claimant under this award for loss of wages during those periods.").

AWARD:

Claim sustained in accordance with Opinion.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
June 30, 1988