

PUBLIC LAW BOARD NO. 4225

Claimant - M. S. Chapa
Award No. 7

Case No. 7

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to suspend Claimant from its service for a period of seven (7) actual days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant served as a Laborer on Gang 7309, Tidewater

Southern. On June 28, 1991, he allegedly sustained an injury when he dropped a claw bar on his left foot. He did not report the injury. He worked the remainder of that day, which was Friday, and was off work until the following Wednesday, July 3, 1991, having taken a personal day on Tuesday. On July 9, 1991, he filed an accident report, claiming the June 28, 1991 injury.

Two days later, July 11, 1991, the Carrier sent a charge letter to the Claimant advising him to be present at a hearing to be held on July 19, 1991, in the Superintendent's conference room at 833 East 8th Street, Stockton, CA. The purpose of the hearing was to determine his responsibility in violating the following rules:

Rule A

Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service.
The service demands the faithful, intelligent and courteous discharge of duty.

Rule B

Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.
Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.
Employees must be familiar with and obey all rules and instructions and must attend required classes.
If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation..
Rules may be issued, cancelled or modified by general order, timetable or special instruction.
When authorized by Superintendent, General

Orders or special instructions may be cancelled, modified or issued by train order or Form Q or track rule.

Rule D

Employees must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any violation of the rules or instructions, any conditions or practice which may imperil the safety of trains, passengers or employees, and any misconduct or negligence affecting the interest of the Company.

Rule E

Accidents, fires, personal injuries, defects in track, bridges or signals, or any unusual condition which may affect the safe and efficient operation of the railroad, must be reported by the first means of communication. Written report must follow promptly when required.

Rule I

Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

Rule 4001

Taking Precaution: Employees must take every precaution to prevent injury to themselves and other persons under all conditions not provided for by the rules.

Employees must not rely entirely upon others, but must protect themselves when their own safety is affected.

Rule 4004

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

Personal injury occurring while off duty must be reported to the proper authority as soon as possible and prescribed written form completed upon return to service.

While this Board questions whether the Carrier successfully proved all the charges against the Claimant, it is clear he violated Rule 4004 when he did not report his injury in a timely manner. The only real question for this Board is whether the Carrier followed the concept of progressive discipline when it issued a seven (7) day actual suspension.

The Claimant has served the Carrier for over twenty-three (23) years, having started his service on April 10, 1968. The only other rule violation listed on his employment record was in 1987, for the same type of offense, namely the failure to report a personal injury in a timely manner. The Board recognizes the Carrier's concern that the Claimant may not have learned his lesson, from the first rule infraction in 1987, when he was issued a Letter of Reprimand. However, in keeping with the concept of progressive discipline and in consideration of the Claimant's employment record, we believe a less severe penalty is in order here, before we arrive at that conclusion.

The Board cautions the Claimant, that in the future he must immediately report, to the proper authority, any incident in which he suffers the slightest injury. Furthermore, he should not consider a co-worker the proper authority. He should also be aware, as in the instant case, that any time an employee allows days to elapse before reporting an accident or an injury, there is cause to doubt the truthfulness of the employee's explanation. It just is not conceivable that the pain and discomfort from an injury would not show up for an entire week.

AWARD

The Claim is sustained in part, the seven (7) day actual suspension is to be reduced to a three (3) working days suspension.



Carol J. Zamperini
Neutral

Submitted:

September 26, 1990
Denver, Colorado