

Case No. 33 Award No. 33

STATEMENT OF CLAIM:

After a careful review of the transcript of the hearing held on this matter, the Board finds that the Carrier's officials, on the property, did not handle this incident in a reasonable fashion. While one could argue that the Claimant should have filled out a report when

he reported to Sopko, we have decided that in view of the Claimant's acutely poor physical condition at that time (as acknowledged by the Carrier's official), it would be unfair and inappropriate to discipline him because of his failure to immediately fill out a report. The Carrier's officials, on the property, clearly overreacted under the circumstances. There was no evidence that the Claimant was attempting to hide or deceive the Carrier. He clearly was ill. He complained of having inhaled exhaust fumes. Because the cause of his complaint could not be immediately determined, should not have effected the actions of the Carrier's officials.

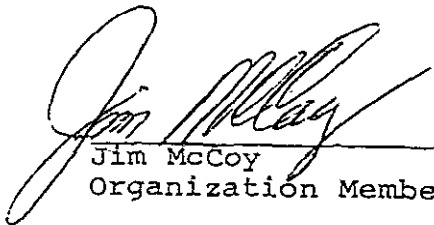
Last, while the Organization did not pursue procedural arguments on the property, the Board notes that the investigation also had serious flaws. For example, the Carrier's officials, on the property, did not follow its "Discipline Policy." The investigating officer recessed the hearing to allow the Carrier's officials to complete certain forms that are a part of the Carrier's policy. These forms, of course, should have been completed at the proper time.

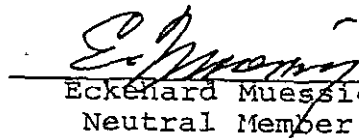
Our holding in this case should not be construed to mean that injuries need not be reported promptly, pursuant to the Carrier's rules. It is of utmost importance for the protection of the employee, to prevent injury to other employees or the public, and to decrease the Carrier's liability, that compliance with this rule is mandatory. On the other hand, employers also have a responsibility to not apply rules by rote. Individual facts and circumstances of each case must be considered in a reasonable fashion. Here, the Claimant was acutely ill. In view of his physical condition, that he did not immediately complete the required documentation should not be considered a fatal error.

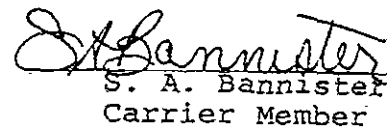
In summary, both on the merits and on the procedure, we hold that the Carrier was arbitrary and capricious in this case.

AWARD

The claim is sustained.


Jim McCoy
Organization Member


Eckenhard Muessig
Neutral Member


S. A. Bannister
Carrier Member

Dated: 4-8-98