

PUBLIC LAW BOARD NO. 6301

**AWARD NO. 20
CASE NO. 20**

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employees
and
Kansas City Southern Railway Company**

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman Eugene Brooks, Jr., for his alleged violation of Rule 1.2.7 and Rule 1.6 Item 4 of the Kansas City Southern Railway Company General Code of Operating rules and Rule 1.6 as revised in the Kansas City Southern Railway Company Timetable No. 4 in connection with the alleged falsification of an injury that occurred on July 26, 2001 was without just and sufficient cause and based on an unproven charge (System File A101801/M04015539 SRL).
2. Trackman Eugene Brooks, Jr. shall now be allowed the remedy prescribed in Rule 33."

FINDINGS OF THE BOARD:

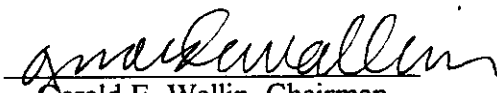
The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

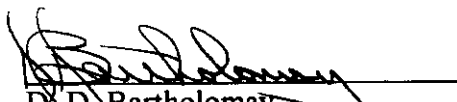
The record presents a procedural objection that must be addressed as a threshold matter. The Carrier maintains that the Claim was not properly appealed during the handling on the property. Examination of the correspondence does show that the Organization appealed the matter out of order. However, each Carrier official that was to have a role in the on-property handling did issue a denial. More importantly, however, is the well-settled principle that procedural objections must be raised at the first opportunity to do so or they are deemed to have been waived. Hand-in-hand with this is another cardinal rule of procedure to the effect that evidence or argument may not be considered by us if it was not dealt with by the parties during their handling of the matter on the

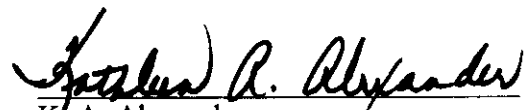
property. Review of the record shows that no such procedural objection was raised on the property. To have been preserved for our consideration, it would have had to have been discussed during the parties' February 20, 2002 conference of the Claim. The conference report does not reflect that it was. We, therefore, must find that any such objection was waived.

After studying the hearing transcript regarding the merits of the Claim, the Board finds there to be substantial evidence to support the Carrier's determination that Claimant had violated the applicable rules regarding falsification of an injury report. According to the record, Claimant had injured his left shoulder in 1996. That injury apparently involved shoulder pain and numbness in his fingers. According to the record, Claimant alleged another injury on July 26, 2001. He said nothing to his co-workers while at the work site about pain or an injury. Claimant admits this. It was not until later in the truck that he first mentioned pain in his shoulder and numbness in his fingers, which were the same symptoms he had experienced with the prior injury. His foreman, who testified at the hearing, said Claimant had reported similar pain approximately two weeks before the alleged date of the injury. Moreover, an MRI examination of the alleged injury found no evidence to support Claimant's allegation. A note from a doctor who examined him reflects the opinion that the condition was pre-existing. This evidence supports the Carrier's determination. Given the nature of the conduct involved, we have no proper basis for disturbing the Carrier's action.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


K. A. Alexander,
Carrier Member

DATE: 11-5-02