

PUBLIC LAW BOARD NO. 1838

Award No. 41

Carrier File MW-BL-78-109

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: The Brotherhood requests that Claimant C. D. Marchant be paid for ten (10) days' time account Carrier assessed Claimant said ten days' suspension for allegedly failing to report and file injury report.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was notified, under date of November 13, 1978, of a formal investigation to be held November 22nd:

"...to determine the facts in connection with your alleged back injury of November 3, 1978 and your failure to report the alleged injury to the proper authority in accordance with Safety Rule 1001."

Claimant, as a result thereof, was notified December 12, 1978:

"You are hereby assessed an actual ten (10) day suspension... as a result of your failure to report your alleged injury to the proper authority in accordance with Safety Rule 1001..."

Safety Rule 1001 reads:

"Employees must report all personal injuries regardless of how slight, to the employee in immediate charge of the work before leaving the company's premises. All required employees should receive prompt medical attention. The employee in immediate charge of the work is responsible for reporting all personal injuries witnessed by him or known to him to insure that reports will be completed and distributed promptly in accordance with company rules.

Failure to report a personal injury by the injured person or the employee in immediate

charge of the work may result in disciplinary action."

Exhibit "A" of the transcript of investigation, the CT-37T, in question, in part pertinent here, reads:

"Date of Accident	K November 3, 1978
Time	L 10:30 AM
Nature and extent of injury	M Strained muscle in back
What was done with injured person	O Went to Bluefield Community Hospital
Name and address of attending physician	P Dr. Bhasin, Bluefield Community Hospital
What was said by injured person as to cause of accident and extent of injuries	Q I was pulling and replacing ties and my back started to hurt me so I went and layed down in back of truck and later I tried to help again but couldn't spike the ties down.
Remarks: Give full particulars as to how accident occurred	X Marchant was pulling and replacing ties and his back started to hurt him. He went to Dr. Bhasin and was referred to Dr. Raub at Princeton. Immediate Supervisor Roadmaster McGinnis Hale."

The transcript reflects that Claimant, on Friday, November 3, 1978, was one member of a two man gang replacing track ties. He reported to his Foreman, about 10:30 AM, that his back was hurting and that he could do no more spiking. Such fact was so reported to the Roadmaster and Assistant Roadmaster. Shortly thereafter, they both came and interviewed Claimant who was sitting in the section truck. In answer to their inquiry what was wrong, Claimant advised them that his back was hurting and, as he had told his Foreman, that it had been hurting for 3 or 4 weeks.

The following examination of Claimant is critical to a conclusary opinion herein.

"Q. Mr. Marchant, when did you actually hurt your back?

A. The first time I hurt my back was Landgraft taking out road crossing two years ago.

Q. Was report made?

A. Yes sir. Lonnie Master took me to Mr Hale's office and Mr. Hale called it in.

Q. Mr. Marchant, on November 3, 1978, at approximately 10:30 AM did you hurt your back while handling ties?

A. Yes sir. I couldn't do no more.

Q. Had your back been bothering you prior to this?

A. Been hurting on and off for two years. That was the worst I ever got when I pulled those ties."

The record also reflects that Claimant cannot read.

The Board is in complete agreement with Carrier's asserted fear as to the proper application of Safety Rule 1001 to wit that any injury, irrespective of its extent, should be reported immediately to insure that all the facts associated therewith are recorded while fresh, and when witnesses are available to be interviewed and thereby avoiding any possible allegation of a past injury being made that such just occurred.

Analysis of the transcript and the submissions of the parties provides a basis for the conclusion that here there was "much ado about naught." At the least perhaps there may have been a technical violation of Safety Rule 1001. However, at worst there may well have been an abuse of discretion.

Here, Claimant, an illiterate, had immediately reported to his Foreman and thereafter, to the Roadmaster and Assistant Roadmaster, that he was unable to continue working because his back hurt him too much. We need not go beyond this point for purpose and reason of the discipline assessed December 12, 1978. Whatever conclusions were reached on the November 3, 1978 incident, semantical or otherwise, it is clear that such were not all the same. Claimant was disciplined because he filed a CT-37 on Monday, November 6th. Yet, the record reflects that on November 3rd, whether, under Rule 1001, Claimant's Foreman, the Assistant Roadmaster or the Roadmaster be considered the "employee in immediate charge of the work" such supervisors knew that Claimant was unable to

work and the reason therefore. That such person saw reason to not ask Claimant whether he had received an injury that date, November 3, 1978, or whether it was a re-injury of a previous injury, merely aggravated that date, is not particularly significant here. The fact of the matter is that a report was made by Claimant. Hence, when the facts herein are applied to Safety Rule 1001, it impells a conclusion that discipline was improperly assessed in this case. Therefore, this claim will be sustained.

Award: Claim sustained.

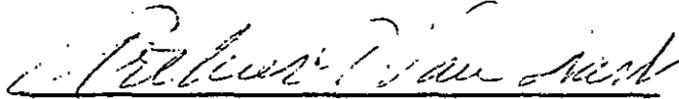
Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.



A. D. Arnett, Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member