

BEFORE

PUBLIC LAW BOARD NO. 3863

PARTIES TO DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF
CLAIM:

- (a) The Carrier violated the current Scheduled Agreement effective May 19, 1976, when it imposed discipline of suspension for 14 calendar days against Claimant M. Clarke on March 30, 1983.
- (b) Claimant Clarke's record be cleared of the charge against him, and he be compensated for all wage loss suffered as a result of this discipline.

THE FACTS: On the morning of February 27, 1983, the claimant suffered an injury to his knee when thrown to the floor of a caboose. He worked until the end of his assignment at 10:30 P.M. The next morning the claimant made a formal report of the injury. He left work early because of disabling pain; he then visited a doctor. He lost six days of work in treatment and recovery.

The claimant was subsequently charged with violating safety instructions on what to do when injured at work. Following a trial, the charge was sustained and the claimant was assessed discipline of 14 calendar days suspension. The specific charge against him alleged:

Violation of Rule 4000 of Amtrak Safety Rules and Instructions which reads, 'When you are injured, you must IMMEDIATELY (a) Report your injury, NO MATTER HOW SMALL, to your immediate supervisor, (b) Obtain medical attention.' On February 27, 1983 at approximately 8:00 A.M., you suffered a sprain to your right knee while sitting in caboose while train crew made up work train, and failed to report your injury until Monday, February 28, 1983 at approximately 10:30 A.M. (Underscoring added).

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The basic issue in dispute is whether, as instructed, the claimant in fact immediately reported his injury and obtained medical attention.

Both the Organization and the Carrier rely on the claimant's testimony to support their conflicting positions.

The claimant testified that he complied with the Safety Rule on the day he was injured. Conceding that he did not report any injury or seek medical attention immediately after the impact, he explained that in his "estimation" he was "all right;" he had a slight bump, which gave him only momentary pain.

It is the claimant's further testimony that, upon return of the pain eight hours later, he reported his injury to his immediate supervisor and then to the Track Superintendent, six hours after that. His statements were denied by both supervisors.

The claimant conceded that he did not obtain medical attention at any time on the day of the injury. This he justified on the ground that he believed himself to be "all right" and considered his injury not serious enough to warrant medical attention.

The Organization maintains that the evidence supports the claimant's assertion that he complied with both aspects of the Safety Rule. It argues that the claimant justifiably felt that he had in fact made a timely and adequate report to the Track Foreman and the Track Supervisor. The Organization also finds, in a doctor's note, confirmation of the claimant's testimony that he had honestly underrated the extent of his injury.

The Carrier responds that the claimant's guilt, as charged, is supported by substantial evidence of probative value. The Carrier sees no basis whatsoever in the language of the Safety Rule for allowing the claimant to decide for himself whether or when to make a report or seek medical attention. It therefore regards the claimant's decision to continue working while injured as a violation of the Safety Rule.

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FINDINGS:

The Arbitrator finds on the whole record and all the evidence that the carrier and each employee involved in this dispute are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

Upon review of the record, the Board must conclude that the Organization's claim cannot be sustained.

The Organization has failed to prove that the claimant complied with the Safety Rule instructions.

The claimant admittedly knew at the earliest possible time that he had sustained an injury. Yet, he has not given an acceptable explanation as to why he did not immediately report his injury and seek medical attention. The Rule emphatically instructed him in clear and simple language not to withhold or delay compliance on the basis of his judgment as to whether the injury was substantial enough to warrant a report or medical attention. It is the plainly apparent purpose of the instruction to compel immediate action and thus avoid the consequences, for the Carrier and the employee, of the employee's mistaken appraisal of the severity of his injury. The claimant's loss of six days strongly reflects the soundness of that purpose.

In view of the claimant's wrongful failure to act immediately, his alleged actions later in the day have little significance in the determination of the issue before us.

Accordingly, we conclude that the allegations of the charge are supported by substantial evidence. We further find that the 14-day suspension was not arbitrary or capricious in view of the recognized importance to the Carrier and the employees of prompt reporting and medical attention.

AWARD:

The claim is denied.


Carrier Member


Neutral Member and Chairman


Brotherhood Member