

PUBLIC LAW BOARD NO. 4104

Case No. 76

PARTIES TO DISPUTE:

Brotherhood of Maintenance of  
Way Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The five (5) days suspension imposed upon Section Laborer G.M. Hinkel for alleged failure to promptly report a personal injury was arbitrary, capricious, unwarranted and on the basis of unproven charges.

2. The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time this dispute arose, Claimant G.M. Hinkel, held a position as Section Laborer on the Charlton, Iowa section gang. On July 9, 1986, Claimant called Carrier offices and stated that he was experiencing chest pains and would be seeking medical attention. Claimant obtained medical attention from the Carrier physician and called Carrier to inform them of his condition. Since he would be absent from work, a personal injury report had to be brought to him. As a result of the incident, Claimant was notified to attend an investigation for the "alleged failure to promptly report alleged personal injury sustained July 8, 1986 at approximately 2:10 p.m..." The investigation was held on July 23, 1986. On August 19, 1986, Claimant was notified that he was assessed a five days suspension.

The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Claimant did not report his injury on July 8, 1986 because he thought it was not serious. It maintains that he told his foreman that he was experiencing "little discomfort and aching"; but it was not until the next morning that the aching increased. It asserts that at that time, Claimant obtained medical attention from Carrier's physician and completed a personal injury report. The Organization states that Safety Rule 589 requires that a personal injury report be filed "...before his tour of duty ends (or as soon thereafter as possible)..." In the Organization's view, Claimant complied with Safety Rule 589 since he was not aware that he had sustained an injury until the morning of July 9. It argues that he believed that the discomfort he experienced on July 8 was the usual aches and pains and not serious enough to file an injury report. Thus, the Organization reasons that the claim should be sustained.

Carrier, on the other hand, argues that Claimant's failure to report a personal injury constitutes a violation of Safety Rule 589. It maintains that since Claimant failed to follow the report until the following day, Carrier can not be sure of what exactly caused the injury. It contends that reports that are promptly filed are studied to prevent the same occurrence from happening to another employee. Carrier maintains that if such reports are not promptly filed, it hinders the ability to protect the safety of other employees. Thus, Carrier reasons that a five day suspension was appropriate in this case.

A review of the record evidence convinces the Board that

Claimant is guilty as charged. Although the Organization argues that Claimant was not aware of the seriousness of his injury until the following day, Claimant's testimony states the opposite. Claimant indicated that he experienced "...a little discomfort, aching...in the chest area..." on July 8, 1986. At that time, Claimant was obligated to complete a personal injury report, regardless of the seriousness of such injury. It is for the protection of both Claimant and the Carrier, that such reports are filed promptly should such injuries manifest to a more serious extent. It must be noted, however, that Claimant did call Carrier officials promptly the next morning and reported to a Carrier physician. For those reasons, we find that a five day suspension is excessive. We will therefore reduce his discipline to a three day suspension. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in the Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated in part.

AWARD: Claim sustained to the extent indicated in this opinion.

  
P. Swanson, Employee Member

  
E. Kallinen, Carrier Member

  
Martin F. Scheinman, Neutral Member

5/28/91