

PUBLIC LAW BOARD NO. 4747

Claimant - W. L. Stangroom  
Award No. 11  
Case No. 11

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employes  
and  
Union Pacific Railroad Company

STATEMENT  
OF CLAIM

1. The thirty-day deferred suspension assessed Sectionman W. L. Stangroom for alleged violation of various company rules as indicated in Mr. Malone's letter of September 14, 1992, is arbitrary, capricious, and unwarranted.
2. In light of (1) above, the claimant's record shall be cleared of the discipline referred to above.

FACTS

By letter dated June 5, 1992, the Claimant was notified to report to the Superintendent's Conference Room, Cheyenne, Wyoming for a formal investigation on June 18, 1992. The purpose of the hearing was to determine whether he had been responsible for failing to report a personal injury which allegedly occurred sometime between the period of May 18, 1992 through May 21, 1992. The Claimant did not report an injury to his Supervisor at any time during that week. According to the Carrier, such failure to report an injury would be a violation of Maintenance of Way Rules, Block Signal, Cab Signal and Interlocking Rules of November 1, 1991.

The Claimant served as a Sectionman during the week he claimed he may have been injured. He was working on the Medicine Bow Mine Lead making repairs on a derailment which occurred the week before. On May 28, 1992, one week later, he talked to his Supervisor by telephone and told him that he believed he had

suffered a possible hernia while working at Medicine Bow. He further advised his Supervisor that he would not be at work the following day because he was consulting a doctor. The Supervisor directed him to fill out an Injury Report form as soon as possible and to report back to him after his examination.

The Claimant went to the doctor who felt he probably had a hernia and referred him to a surgeon. The surgeon confirmed he had a hernia which was difficult to detect because it was not always apparent. He was unable to pinpoint the period of time when the hernia could have occurred. He also could not say with medical certainty how long the Claimant had the hernia.

After leaving the surgeon, the Claimant called his Supervisor and advised him of the diagnosis. According to his testimony, he could not file an accident report since it was the weekend. At the beginning of the week, his Supervisor told him they had not yet received a written report and directed him to get one to the office post haste. The Claimant obtained an Injury Report Form and faxed the report to his Supervisor on June 3, 1992.

After the May 28, 1992 call from the Claimant, the Supervisor discussed the matter with other Carrier officials. It was decided that a charge letter should be sent to the Claimant alleging a late reporting of an injury. The initial hearing date was established.

POSITION OF THE PARTIES

The Organization argues that the charges against the Claimant should be withdrawn and his record cleared of any mention of the incident. They contend the Carrier failed to cite specific rule violations in the charge letter which is contrary to Rule 48 (C). Furthermore, the Organization offers that we still aren't sure whether we are dealing with an injury or an illness considering the fact that the occurrence of a hernia cannot be pinpointed; there being some evidence that people are born with hernias. The organization would also argue that the Carrier failed to provide the Claimant with his due process when someone other than the hearing officer decided whether or not the Claimant was responsible for the alleged rule violations.

Finally, even if the Carrier complied with all due process requirements, it is obvious the Claimant reported the

injury/illness the day he became aware of it. First, he called his Supervisor to report a possible injury, when pain he had been experiencing for quite some time became unbearable. However, it should be noted on this point, that even if the Claimant called his injury a hernia, it was a guess on his part. It would have been impossible for the Claimant to diagnose his condition since he was not a medical doctor. Secondly, he called the Supervisor the day the surgeon confirmed that he had a hernia.

The Carrier counters the Organization's arguments by noting that the charge letter was sufficiently concise relative to the rules violation. The Claimant knew he was being charged with failure to file a timely injury report. Furthermore, he had sufficient time to obtain representation and prepare his case.

Beyond the due process questions, it is clear the Claimant contended he injured himself between May 18, 1992 and May 21, 1992. He did not verbally report this potential injury until May 28, 1992 and did not file a written report of injury until June 3, 1992. That's a violation of the Injury Reporting Rules.

#### FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Public Law Board is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

Rule 48 (C) provides that:

Prior to the hearing, the employe alleged to be at fault shall be apprised in writing of the precise nature of charge(s) sufficiently in advance of the time set for the hearing to allow reasonable opportunity to secure representation of his choice and the presence of necessary witnesses. The General Chairman shall be furnished a copy of the charges (emphasis added)

The Board appreciates the due process obligations of the Carrier to communicate the "precise nature" of the charges to an employe sufficiently in advance of the hearing. Failing to do so would make it impossible to prepare an appropriate defense. In this case, the Board believes the Carrier has met that obligation. The Claimant was forewarned that he failed to file

an Injury Report in a timely manner. He was also advised of the dates of the alleged rule violation. The charge presented in the charge letter and argued by the Carrier at hearing was specific enough to advise the Claimant of the precise nature of the charges. We do not believe his due process was compromised.

This case can be distinguished from the decision issued by Referee Roy R. Ray in as much as, in that case, the Claimant was charged because he had been involved in an accident. There were no specific allegations that the Claimant had done anything to cause the accident. He was not accused of falling asleep, following too closely, going too fast, etc. The lack of specifics in that case truly hindered the Claimant's ability to prepare a defense and obtain witnesses since he was left to guess what charges the Carrier was issuing against him. As mentioned above, the charge issued in the present case was specific, the Claimant failed to file a timely injury report. Even though more than one rule could have been cited in such an allegation, the charge letter was precise enough to allow the Claimant and his representative to prepare a defense. It would only have been a violation of the Claimant's due process if the Carrier had attempted to expand the subject of the charge against the Claimant at the Investigation. They did not. Therefore, in this instance, the Carrier complied with the language of Rule 48 (C).

As to the merits of this case, we find in favor of the Claimant. Even the Carrier's surgeon recognized the inability to diagnose exactly when a hernia occurs. It was the Claimant's best guess that it had probably happened the week before he talked to his Supervisor since the pain seemed to be exacerbated. Furthermore, he reported to the Supervisor the minute he realized the discomfort required medical attention. There is much validity in the Organization's argument that people who do physical labor realize many aches and pains during their work experience. If they interpreted every instance of discomfort as an injury, the daily logs would be replete with such reports. That is the reason cases of this nature must be analyzed on an individual basis. In this matter, this Board cannot fault the Claimant for his failure to seek medical service or to recognize his injury/illness prior to his pain becoming unbearable.

Furthermore, the Claimant's explanation of his injury on the Injury Report Form demonstrates his uncertainty about his condition even on June 1, 1992, when he wrote:

I believe all the years of heavy lifting on the railroad has caught up with me.

While it is true that on his Injury Report, the Claimant cited the dates of May 18, 1992 through May 21, 1992, as the probable dates of his injury, he did this after consulting with the surgeon who told him there was no way to fix the date of the hernia. The Claimant knew the Carrier had access to the Carrier surgeon, therefore, there was no reason for the Claimant to lie. The Board is convinced the Claimant inserted those dates because, as he testified, he thought it was necessary to write some date on the report.

Based on an analysis of the evidence in this case, the Board does not believe the Claimant was guilty of the charges against him.

AWARD

The claim is sustained.



Carol J. Zamperini  
Neutral

Submitted:

January 12, 1993  
Denver, Colorado