

## NATIONAL MEDIATION BOARD

### PUBLIC LAW BOARD NO. 6394

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BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE	)	Case No. 77
	)	
and	)	
	)	Award No. 77
NORFOLK SOUTHERN RAILWAY COMPANY	)	
(Former Norfolk and Western Railway Company)	)	

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Richard K. Hanft, Chairman & Neutral Member  
J. Dodd, Employee Member  
D. L. Kerby, Carrier Member

Hearing Date: July 25, 2017

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissed from all services with Norfolk Southern Railway) of Mr. E. Jefferson, issued by letter dated July 30, 2015, in connection with his alleged violation of Carrier Safety and General Conduct Rules, in that his report of an on-duty injury for which he received medical attention on the evening of March 25, 2015 did not comply with the timely reporting requirements of Rule 912 was arbitrary, capricious and unwarranted (Carrier’s File MW-HARR-15-13-LM-254 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Jefferson shall receive the maximal remedy allowed under Rule 30(d) of the Agreement.”

**FINDINGS:**

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

**AWARD:**

After thoroughly reviewing and considering the record and the parties’ presentations, the Board finds that the claim should be disposed of as follows:

There is no doubt Claimant in this matter presented himself to the emergency room at Bryn Mawr Hospital as soon as he could have after leaving work at 3:30 p.m. on March 25, 2015. Further, the diagnosis from the hospital states that Claimant suffered from Sciatica and he was given a prescription to alleviate muscle spasm.

The problem for the Board in this matter is that at one point in the investigation on the property the Claimant testified that around 11-ish he was pumping a jack, felt a sharp pain in his back and leg and told his foreman. The Foreman testified that Claimant didn't report any injury to him and that he observed him throughout the day and did not notice any indication that the Claimant may have injured himself.

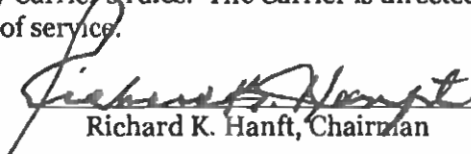
In contrast to that testimony, elsewhere in the transcription of the investigation, Claimant states that he did not know that he needed medical attention until he got into his car and was driving home.


Rule 912 (3) provides that "An employee who sustains a personal injury while on duty or on Company property or equipment must, before leaving Company premises, report it to his/her immediate supervisor and complete and sign a written report of the incident using the prescribed form. If the injury to the employee is of such a nature that the Employee is unable to complete the written report, then the injured employee's immediate supervisor will complete the form. The written report and facts of the incident will be promptly progressed through prescribed channels..."

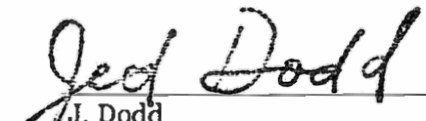
Claimant, rather than reporting the injury when it occurred sometime around 11:00 a.m., or at least before he left Company property for the day, took it upon himself to seek medical attention without reporting the injury to the Carrier. Hence, Claimant made a conscious decision to circumvent the Carrier's rule.

While the Carrier has an obligation to attend to injured employees the Carrier's employees have a coequal responsibility to be forthright with the Carrier and timely report injuries. Here, Claimant was not forthright with the Carrier and made a conscious decision to ignore his responsibility to report the injury in a timely manner.

The Board has determined that while the decision made on the property was neither arbitrary nor excessive, the time served out of service should be sufficient to prevail upon Claimant that he must obey Carrier's rules. The Carrier is directed to reinstate claimant without compensation for time out of service.

  
Richard K. Hanft, Chairman

  
D. L. Kerby  
Carrier Member

  
J. Dodd  
Employee Member

Dated at Chicago, Illinois, September 5, 2017