

PUBLIC LAW BOARD NO. 6920

AWARD NO. 1

CASE NO. 1

Carrier File: M0404-5824

**Organization's File: KCS.MS
SRC.A031904.33.Shelvy**

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance
of Way Employees**

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

"We are hereby submitting APPEAL in accordance with RULE 34, of the current Work Agreement between the Kansas City Southern Railroad Company, former MidSouth Rail Corporation, former South Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employees. This appeal is concerning Director Labor and Office Administration C. L. Wright decision dated March 19, 2004. Mr. Wright disciplined employee W. E. Shelvy for alleged violation of The Kansas City Southern General Code of Operating Rules 1.1.1, 1.1.2, 1.1.3 and 1.1 and the Engineering Department Star book items 2 and 3 on page iv and item (h) on page 2. This was the result of a formal investigation held in the Conference Room of the Kansas City Southern, 650 Childre Road, Pearl, Mississippi on March 12, 2004."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from the Carrier's service on March 19, 2004 for violation of rules related to the timely reporting of an alleged work-related injury. At the time of his dismissal, Claimant had some thirteen years of service with the Carrier most recently as a trackman on Gang 157. He had previous railroad service dating from 1974 with the Illinois Central.

Our review of the record in this matter does not reveal any significant procedural irregularities that warrant commentary.

On the merits, we find the record to contain substantial evidence in support of the Carrier's

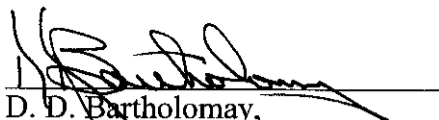
determination that Claimant violated its injury reporting requirements. Claimant began seeking medical treatment for pain in both hands and wrists in January of 2003. It appears that Claimant had discussions with his doctor in that same time frame about whether there was a carpal tunnel syndrome connection. Nonetheless, it is undisputed that Claimant did not inform the Carrier of the situation nor did he file any reports of injury. The Carrier's first knowledge came via the service of a lawsuit more than one year later for injury damages allegedly related to the duties, equipment, and work practices associated with his job.

Given the foregoing considerations, we find that Claimant's failure to properly report his alleged injuries was established by the unique facts of this record. Under the circumstances, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


J. G. Albano,
Carrier Member

Date: 6-12-06