

SPECIAL BOARD OF ADJUSTMENT NO. 280

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) TO
DISPUTE) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

AWARD

STATEMENT OF CLAIM:

- "1. Carrier violated the effective Agreement when Track Laborer Fred Hawkins was unjustly withheld and dismissed from service.
2. Claimant Hawkins shall now be paid for all time lost beginning April 2, 1986, and on a continuing basis, with all seniority, vacation and all other benefits restored intact." (MW-86-25-CB-Hawkins; 53-912)

OPINION OF BOARD:

Claimant, a Laborer, assigned to the Eustace Branch, Athens, Texas, has a service date of May 22, 1978. By letter dated April 2, 1986, Claimant was withheld from service pending formal investigation for alleged violation of Rule 806 for failing to promptly report a personal injury. After investigation held on April 22, 1986, and by letter dated April 24, 1986, Claimant was dismissed from service.

On March 20, 1986, Claimant injured his ankle while working but did not report the injury to a Carrier supervisor until he called Assistant Roadmaster R. A. Jackson on March 23, 1986 and informed Jackson that he had a fractured ankle. On March 24, 1986, Claimant completed the appropriate paperwork for the injury.

Claimant testified that at the time of the injury on March 20, 1986, he was aware of his responsibility to promptly report the incident. Claimant testified further that at the time of the injury he did not feel that his ankle was hurt bad enough to make a report. Claimant continued to work on March 20 and 21, 1986. However, on March 22, 1986, Claimant sought medical attention and then learned that his ankle was fractured.

Claimant's record shows that this was not the first time that Claimant failed to promptly report an injury. Previously, Claimant was injured but delayed reporting the injury for at least one week. By letter dated March 13, 1981, Claimant was cautioned that failure to report any injury without delay could result in dismissal.

At the time of the investigation, Claimant stated that he was physically unable to resume his duties.

Rule 806 requires that all cases of personal injury while on duty must be promptly reported. It is well-accepted that the failure to promptly report an injury as required by Rule 806 is grounds for discipline. Third Division Awards 25162, 24014. As explained in those awards, the purpose of the reporting requirement is that the Carrier is entitled to receive such reports promptly since such incidents may involve liability on the part of the Carrier. The reporting requirement also benefits the employee due to the obligation of the Carrier to furnish medical care to the injured employee. Third Division Award 24654, Fourth Division Award 4199. Indeed, as stated in Award 25162, "any employee who does not comply with the accident reporting rule does so at his peril." Here, Claimant was aware of the requirements of the Rule and clearly did not meet his obligations under the Rule. We cannot say that Claimant's waiting the number of days that he did to take action can be considered "prompt". Claimant's contention that he did not act in a more expedited fashion since he initially did not feel that the injury was sufficiently serious to report must be rejected. As noted, Rule 806 requires the reporting of "all" on duty injuries. We therefore find substantial evidence in the record to support the Carrier's conclusion that the Rule was violated.

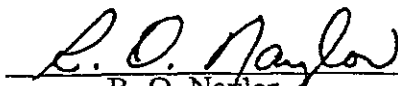
However, we are of the opinion that dismissal was excessive as a penalty in this case. Inasmuch as Claimant was aware of the requirements of the Rule, and further considering that this was not the first instance wherein Claimant failed to take prompt action in reporting an injury and was cautioned accordingly (which we consider only for the purpose of examining the appropriateness of the amount of the discipline as opposed to a

determination of Claimant's guilt or innocence of the charges against him), we shall require that Claimant be returned to service with seniority and other benefits unimpaired but without compensation for time lost. Return to service is conditioned upon successful completion of a return to service physical examination.

AWARD:

Claim sustained in accordance with opinion. Claimant shall be returned to service with seniority and other benefits unimpaired but without compensation for time lost. Return to service is conditioned upon successful completion of a return to service physical examination.


Edwin H. Benn, Chairman
and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Tyler, Texas
October 23, 1987