

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 47
Docket No. 69

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The thirty (30) day suspension assessed Trackman R.L. Upah for allegedly failing to promptly report an injury was without just and sufficient cause. (Organization File 4D-4725; Carrier File 81-85-19-D)
- (2) Trackman R.L. Upah shall have his record cleared of this incident and be compensated for all wage loss suffered."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

The Claimant is employed as a trackman at Carrier's Tama Welding Plant. On Saturday, July 14, 1984, Claimant was involved in an altercation with another employee. Claimant reported the incident to the assistant supervisor, but did not report any injury at that time. After seeing his personal physician the following Monday, Claimant reported suffering a broken finger to his supervisor. Claimant was notified to report for investigation, to be conducted on July 23, 1984, of the charge:

"Your responsibility in connection with your failure to properly report a personal injury to yourself which allegedly occurred while you were on duty at the Tama Weldingm Plant at Tama, Iowa on July 14, 1984."

The investigation was conducted as scheduled on July 23, 1984. A copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that the Carrier has failed to prove the instant charges. Instead, the Carrier disciplined the Claimant in this case because it believes that Claimant is responsible for the altercation that led to his injury. The altercation incident, however, is the subject of a separate claim in Docket 70 before this Board.

The Carrier contends that the charges were proven. The Claimant knew that he was injured on the day of the altercation;

he had ample opportunity on that day to notify his supervisor. There was no reasonable basis for Claimant's two-day delay in reporting his injury. The assessed discipline was therefore warranted.

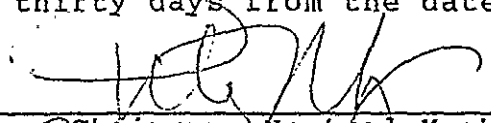
This Board has reviewed all of the evidence and testimony in this case, and it finds that although the altercation with the other employee took place on Saturday, July 14, 1984, the Claimant was not certain that he had received an injury to his finger until July 16, 1984. The testimony is clear that after the altercation with his fellow employee, the Claimant did report the incident, but he did not experience the pain nor feel that medical attention was necessary until Sunday, July 15, 1984. On that date, his finger began to swell, and he decided that he should see his personal physician on Monday, July 16, 1984. Once he had his personal physician take an X-ray of the finger and determine that it was fractured, he reported the injury immediately to the Carrier. Hence, the Claimant complied with the rule of promptly reporting an injury.

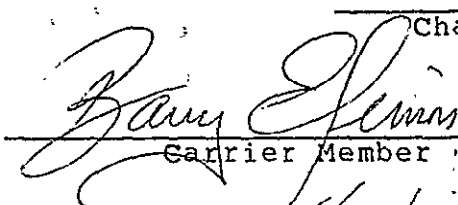
It is fundamental that the rule is clear that an employee must report an injury as soon as he is aware of it. This enables the Carrier to take whatever action it feels is necessary to care for the employee, as well as to protect the Carrier from further liability. In this case, the Claimant cannot be charged with knowledge of an injury requiring that it be reported until Sunday, July 15, 1984, when his finger began to swell. On Monday, July 16, 1984, when it was determined that there was a fracture, he promptly reported the injury.

This Board thereby finds that the Carrier failed to meet its burden of proof that the Claimant failed in his responsibility to properly report a personal injury to himself. Hence, there was no basis for the penalty that was imposed upon the Claimant. This Board finds that the claim should be sustained and the discipline removed from the Claimant's record, and he should be made whole for all losses as a result of it.

AWARD:

Claim sustained. The Carrier is required to comply with this Award within thirty days from the date hereof.


Chairman, Neutral Member


Carrier Member


Labor Member

Date: 7/10/86