

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 187
Award No. 187

Claimant: J. M. Cazares, Jr.

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Lines

STATEMENT
OF CLAIM

1. That the Carrier's decision to assess Claimant a fifteen (15) calendar day suspension without pay was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.
2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

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

The Claimant has worked as an employee of the Carrier for over twelve years. For at least four of those years, he has served as a Track Foreman. On September 5, 1996, he went on duty at 7:00 a.m. and off duty at 3:30 p.m. He reported to work the following day, September 6, 1996, worked his regular shift plus several hours of overtime. On Saturday, he, along with other crew members were called out to work seven hours of overtime. In each of these cases the work was labor intense.

The Claimant was not scheduled to work on Sunday, September 8, 1996, and did not. He reported to work on Monday, September 9, 1996. According to the testimony of the Claimant's supervisor, the Claimant approached him around 7:30 a.m. and asked to be excused from work to see his personal physician. The supervisor testified that the Claimant told him that he had

suffered an off-duty injury. The supervisor granted the time off, but, told the Claimant that it would be without pay. The Employee allegedly took exception to not being paid for the time. At that point, he allegedly changed his story and told the supervisor he wanted to report an on-the-job personal injury. When he was asked when the injury occurred, he said it had happened the previous Thursday, September 5, 1997.

He was accompanied to the Company Physician, where his injury was diagnosed as a muscle strain. He was off for the next couple of days. He returned to work on Wednesday restricted to lifting 20 pounds or less.

By letter dated September 16, 1996, the Claimant was advised to appear at a formal hearing to determine whether he had violated Carrier rule 1.2.5, by failing to report his injury before leaving the Company property on September 5, 1996. The rule cited reads in part:

1.2.5 Reporting

All cases of personal injury, while on duty or on company property, must be immediately reported verbally to the proper manager before leaving Company property. Form CS2611 (Employee Report of Accident) must be made in writing to the undersigned.

The Carrier determined that the evidence supported the charges against the Employee. A certified letter dated October 16, 1996, advised the Claimant that he was being suspended from work without pay for a period of fifteen (15) days, effective October 25, 1996 through November 8, 1996.

POSITION OF THE PARTIES

The Organization argues that the Claimant believed at the time of the injury that his aches and pains were those normally attributed to his labor intense work. Even though he could pinpoint the time at which he was injured, his injury did not appear to be serious enough to be classified as a reportable injury. Besides, the Organization argues, employees knew that reporting an on-the-job injury was unpopular with management because they wanted to preserve their record of having very few reportable injuries. The Claimant's supervisor even tried to talk the doctor out of issuing the Claimant a prescription drug so that the accident would not be reportable under FRA. He instead urged the doctor to give the Employee an over-the-counter drug so that the Claimant would be able to continue to work.

The Organization further argues that it is not unusual that the type of injury suffered by the Claimant did not manifest itself until days later. It is perfectly understandable that the

Claimant felt no need to report such an injury until he realized he could hardly get out of bed on Sunday morning.

The Carrier believes there was ample time for the Claimant to recognize he had an injury. Furthermore, even on Monday, September 9, 1996, the Claimant initially indicated he had injured himself while off duty. He changed his story and wanted to report an on-the-job injury only after he was told that he would have to take the requested time off without pay.

The Carrier holds that the Claimant violated Rule 1.2.5 and was appropriately disciplined.

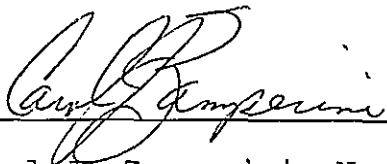
DECISION

The Board recognizes that there may be occasions when an injury does not manifest itself immediately. As muscles cool down injuries become more apparent. In this case, however, the Claimant not only did not report the injury on the day in question, but allowed nearly four days to pass before he elected to advise the Carrier of the possible injury. Among other reasons the Rule was established, was to prevent an employee from aggravating an injury by not reporting it in a timely manner, thus not getting the needed medical attention. This enhances the potential for a more permanent injury and could cause the Carrier even greater losses in time and productivity. This is obviously not good for either the employee or the Company.

The Board believes there was sufficient evidence to support the actions of the Carrier. Furthermore, the Board believes the penalty is appropriate in view of the Claimant's total employment record and tenure.

AWARD

The claim is denied.



Carol J. Zamperini, Neutral

Submitted this 28th of March, 1997.
Denver, Colorado