

JW Sykes -
JWS-90-62
SB#13

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 13

NATIONAL MERITATION
BOARD
Dec 3 3 39 PM '90
HALL-OF-RECORD
ADJUSTMENT BOARD

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: CSX Transportation, Inc.

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

Fifteen day suspension assessed to J. W. Sykes, ID#
165921, as a result of investigation held August 6,
1990 at Rocky Mount, North Carolina.

FINDINGS:

Claimant J. W. Sykes was issued a memorandum on August 1, 1990, charging him with the violation of Rule 40 of the CSX Transportation Safety Rules which requires "an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while on duty or while on Company property". The Claimant was charged with failing to immediately notify his foreman, assistant foreman, or the proper officer after his personal injury on July 31, 1990.

A formal hearing was held on August 6, 1990, and as a result, Claimant was assessed a 15 day suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging his suspension.

This Board has reviewed the evidence and testimony in this case and we find that there is not sufficient evidence in the record to support the finding that the Claimant was guilty of a Rule 40 violation. The record reveals that on the afternoon of July 31, 1990, at approximately 6:15 or 6:30 p.m., while travelling to the camp site, the Claimant inhaled carbon monoxide fumes. When he returned to the camp, he inquired as to the location of the assistant foreman. The

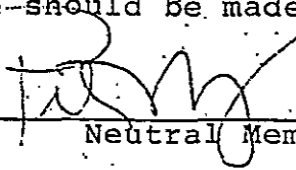
Claimant did tell another employee about the fumes and he did make an effort to tell others about the fumes and that he was feeling sick.

The record reveals that the Claimant reported his injury the next morning when he was able to contact a foreman.

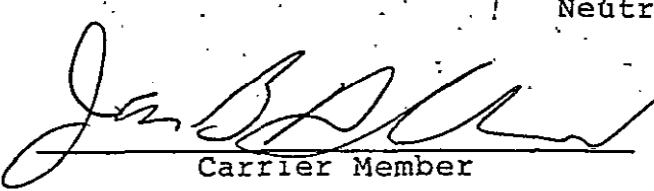
This Board is well aware of the importance of the rule requiring prompt notification in cases of personal injury. The record also reveals that the Claimant, who has been an employee of the Carrier for 17 years, is aware of that rule. However, after a thorough review of the record in this case, this Board must find that the Carrier has not met its burden of proof that the Claimant did not make every effort to promptly report the injury on the night that it happened. The record reveals that he reported it the next morning and that the Carrier was not in any way prejudiced by that short delay in reporting. Therefore, the claim must be sustained.

Award:

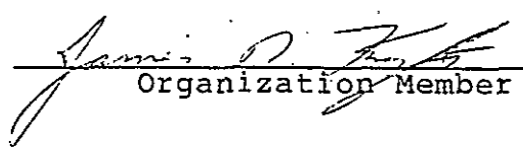
Claim sustained. The suspension shall be removed from the Claimant's record and he should be made whole for all monies lost.



Neutral Member.



Carrier Member



Organization Member

Date: 11-27-90