

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 450

Case No. 450  
UP File 900010

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Union Pacific Railroad  
(Former Missouri Pacific Railroad Company)

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12, when B&B Carpenter L. C. Ray was assessed a thirty (30) day deferred suspension from service on October 18, 1989.

(2) Claim in behalf of Mr. Ray for removal of the discipline from his record and never to be referred to again.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

The Claimant B&B Carpenter, L. C. Ray, following a formal investigation held October 11, 1989, on the charge that he allegedly sustained a personal injury on September 20, 1989 and did not report it until September 28, 1989 while working on the Austin subdivision at M. P. 19.49, near Oakwood, Texas on Gang 30003, was found to be culpable. Carrier imposed a thirty (30) day deferred suspension as discipline therefor.

Carrier's Safety Rule 4004 states in part:

"All cases of personal injury, while on duty, or on Company property, must be properly reported to proper authority on prescribed form."

On September 20, 1989, Bridge Gang 3006, was installing a 66 foot culvert under the track. Claimant was a member of that gang. On September 28, 1989, at 8:10 AM, Foreman Benny Carter, Claimant's Foreman, called a A. E. LaRose, Manager Bridge Maintenance, at Bellmead and notified him that the Claimant said he had been hurt and he wanted to talk to the Manager. Claimant said he had been struck by a maul by a new man, Louis Tolbert, while they were installing pipe at Oakwood. Claimant Ray therefor turned in an injury report on September 28. The Claimant was sent by the Manager immediately to the Hearn Clinic.

New man Tolbert struck the Claimant on the left shoulder with the maul. Tolbert said that he did not think the Claimant was hurt. Claimant Ray and Mr. Harra were not

members of Gang 3006 but were members of Gang 2402. However, their Foreman was on vacation and they were working with the other gang.

The nurse or receptionist told the manager, Rose, that the Claimant had a bruised left shoulder.

The Claimant did not lose any time because of the injury. The reason that he went to the doctor was because it was still sore. When asked why he had not reported it the Claimant said that he did not know.

The incident occurred as the Claimant was passing by B&B Helper Louis Tolbert, who was in the process of swinging his maul. When said maul hit a strut it glanced off and hit the Claimant on the left shoulder blade. It was not a normal swing of the maul but more like a hard tap.

Tolbert was of the opinion that Claimant was not injured, that he could not have suffered an injury because the Claimant came back and worked hard, picking up scaffold board.

Joe Price, Jr., a B&B Carpenter, saw the incident occur from 5 feet away. He testified that Tolbert was tapping struts, that the Claimant walked by the edge and the maul glanced off the strut and hit him on the shoulder. When Price saw the accident he asked Ray, "are you all right?" and Ray replied "yes." "Do you want me to take you to the hospital?" The Claimant said "no, I am all right."

Clearly an injury occurred but the Claimant was in violation of Safety Rule 4004. As pointed out in Third Division Award 19298 (Cole):

"We believe that it is common knowledge that any employee in any hazardous employment is entitled, and gets, certain benefits if the employee is injured in service, without regard to negligence or fault.

Prompt reporting of injuries, whether real, suspected, or imaginary is extremely important to the employer because:

1. the employer is entitled to mitigate his damages by having the employee treated promptly, so that an earlier return to work is possible and a valued experienced employee may return to his job.

2. That Carrier has the duty to its stockholders and its employees to correct any condition that causes injuries if such a condition may be corrected.

3. Prompt reporting of injuries is necessary and extremely important. It is set forth in the rules and it is a reasonable requirement. In the matter at hand, the time elapsed before reporting was 12 days. We think that this is far in excess of a reasonable time...

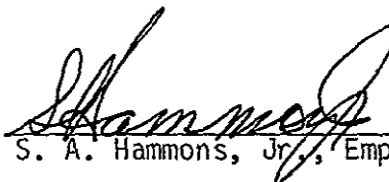
Claimant's testimony shows that he knew the contents of the rule and we see no reason to dispute this.

It is of the greatest importance for the employer to know of any injury, whether real, suspected, or imaginary, that has happened to any of its employees while on duty. And employee may not invoke his own judgment of what constitutes a reportable injury. He must report all of them according to the rules, whether real, suspected, or imaginary."


The Claimant failed to timely and properly file an injury report.

The discipline assessed in this case was most reasonable. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued January 25, 1991.