

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 527

Docket No. 527
File 910074

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when Machine Operator S. Mallet was assessed a 30-day
suspension on October 26, 1990.

(2) Claim on behalf of Mr. Mallet for wage loss suffered,
beginning October 27, 1990 until November 25, 1990.

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

The Claimant, Machine Operator S. Mallet, suffered an
on-duty personal injury (neck) on Friday, September 14,
1990. He did not report said injury on that Friday.

Claimant reported to his Foreman on early Monday
morning, September 17, and advised that he had injured his
neck on the last work day Friday, the 14th. Both his
Foreman and the Manager Track Maintenance (MTM) Brandt
talked with the Claimant. Neither instructed him to make
out the injury report. They, in effect, asked "would you
like to fill out the form." The injury report was finally
made out and filed on Wednesday, September 19, 1990.

Thereafter, the Claimant was formally charged with:

"Failure to properly report a personal injury."

A formal investigation was held. As a result thereof,
the Claimant was assessed a 30 day suspension as discipline
therefor.

General Rule E reads:

"Accidents, personal injuries, defects in track, brakes or
signals, or any unusual condition which may affect the safe
and efficient operation of the railroad, must be reported by
the first means of communications. Written report must
follow promptly when required."

The Board finds that the Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced to support the Carrier's conclusion of Claimant's culpability. The injury incident had occurred on Friday, about 9:30 AM. The Claimant on Friday had talked to MTO Sims after he had inspected the ATS75. Sims asked the Claimant if he was okay and Mr. Mallet advised him that he was okay. Sims observed no evidence of an injury. Also, neither did MTM Brandt.

However, the Claimant did deny that he was so asked. The facts, in any event, are clear that the Claimant was injured on Friday and he did not report it until Monday and he was reporting it then only "in case he had to fill out the accident report."

In the circumstances, the Board will reduce the discipline to a 20 day suspension as it was the employee's first incident.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



S. A. Hammons, Jr., Employee Member



R. O. Rock, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued April 24, 1992.