

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 626

Docket No. 626

File 930502

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when J. Lighten, SSN 439-90-2541 was dismissed from service on May 7, 1993.

(2) Claim in behalf of J. Lighten for removal of the discipline from his record and for wage loss suffered beginning May 3, 1993 and continuing until Claimant is reinstated to service with seniority, vacation, and other rights unimpaired.

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

The Claimant, Trackman Jesse Lighten, about 1:15 PM was struck in the back by a track vehicle, TRIP-03, pushing him some three feet forward. He went back to work and finished out his work day, about 2:00 PM. He later saw his Supervisor R. D. Turtle and spent some 25-30 minutes with him in Turtle's truck during which time Mr. Turtle was writing information on a yellow pad. Then Claimant departed for his home some 400 miles away.

The Claimant talked on Sunday evening, March 7, to Track Supervisor Noll and complained to him about his back. The Claimant advised that he had previously been "shook up." On Monday, March 8, the Claimant tried to get the required injury report at Monroe to fill out but was unsuccessful. Also, on Monday, March 8 he went to a medical center which diagnosed a lumbar spine sprain and a tightness in his lower back. On Tuesday, March 9, the Claimant did fill out the required report of personal injury. He had it faxed from the yard at Monroe, Louisiana.

Claimant was notified under date of March 12, 1993 to attend a formal investigation because of the incident on the charge:

"... you allegedly sustained a personal injury when you were struck by the TRIP 03. Also, you allegedly failed to report this injury until March 9, 1993."

As a result of the investigation finally held on April 7, 1993, the Carrier concluded culpability of General Rule 607, part 2 and Rule 4004. He was dismissed from service on May 7, 1993 as discipline therefor.

Rule 607 - Conduct, reads:

"Employees must not be (1) careless of the safety of themselves or others, negligent, insubordinate, dishonest, immoral or quarrelsome."

Rule 4004 - Reporting, reads:

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

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

There was sufficient evidence adduced that permits and supports the conclusion reached by the Carrier. But as to the second charge, i.e., that he violated Safety Rule 4004, the Board does not find that he was not injured although the Claimant's explanation of the incident as being "shook up" and his later explanation of extending that steadfast expression to pain and suffering may be a stretch for other forums to pass upon.

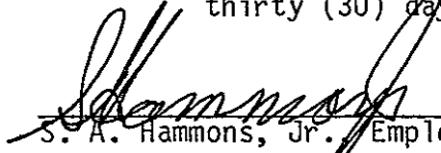
A failure to promptly report incidents of injury no matter how minor, as the rule requires, have been cause for discipline, including dismissal.

The Board finds cause in this record to permit it to modify the discipline imposed. Mr. Turtle took notes for 25 to 30 minutes on March 5th from the conversation with the Claimant. The Union representative asked that those notes be made part of the transcript. An allegation was made that Mr. Turtle had said he did not have the injury form in his possession. Those critical notes were not part of the transcript presented to this Board.

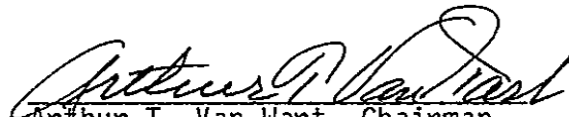
The Board will modify the discipline. The Claimant will be reinstated to service with all rights unimpaired but without pay for time out of service subject to first presenting a physical okay to return to work and thereafter passing the necessary Carrier physical examination.

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


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member