

SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 139
Award No. 139

Claimant: G. D. Muscutt

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company

STATEMENT
OF CLAIM

1. That the Carrier's decision to suspend Claimant, G. D. Muscutt for a period of three (3) working days 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.

On February 3, 1993, the Claimant worked as a laborer helping to install ties. His Foreman was B. F. Craig. The crew was working with a mule, a compressor and a second push car. After the ties were installed, the Foreman told the Claimant to take the mule to Merlin, where they would subsequently switch it to the pulling end of the unit heading easterly toward Hugo. Both the east and west switches needed realigned in order to change direction. The Foreman had intended to realign both switches, but only had a chance to realign the west switch because the Claimant had already realigned the east switch.

After the switches were realigned for easterly movement, the Foreman and the Claimant removed the drawbar and used them to hookup the mule to the other units. Testimony revealed the drawbars were quite heavy and required two men to change them around.

After this, the Foreman left for a doctor's appointment. The Claimant finished his work around 3:15 p.m. and went to wash up. At that time, a Truck Driver, B. C. Ware asked him why he seemed to be walking a little stiff. The Claimant apparently responded, but his response was inaudible to the Truck Driver. The Claimant then went off duty, while the Truck Driver went to talk to the Roadmaster, T. Martinez.

According to the testimony of B. C. Ware, the Claimant approached him later that evening and told him he must have hurt his back pulling the switch and would have to fill out an injury report in the morning.

On the next morning, February 4, 1993, the Claimant went into the Roadmaster's office and advised him that he had injured his back the preceding day while throwing the east switch. The Roadmaster, along with B. F. Craig, went to the east switch and aligned it. They found nothing wrong with the switch.

Charges were then filed against the Claimant for failure to submit a timely injury report. By certified letter he was told to appear at a formal investigation to be held on Tuesday, March 9, 1993 to determine whether he was guilty of violating Rule 806, which reads:

Rule 806. REPORTING: All cases of personal injury, while on duty, or on Company Property must be promptly reported to proper officer on prescribed form.

personal injury occurring while off duty that will in any way impair the performance of the duties of an employee must be reported to the proper authority as soon as possible and prescribed written form completed upon return to service.

The Carrier determined that the evidence supported the charges against the Claimant. They suspended him for three (3) working days without pay beginning Tuesday, April 6, 1993 through Thursday, April 8, 1993.

The Claimant argues that not all injuries are the same. Some injuries do not show up right away and others which appear more serious at the time, are short lived requiring no medical attention. When he was injured, he felt a sharp pain in his lower back, but thought it was momentary and would go away. He saw no need to report it. It wasn't until later that evening, that his back stiffened and he realized he would have to file an injury report the next day. He filed it within 24 hours, as soon as, he realized he was actually injured.

The Carrier points out that the Claimant failed to report his injury in a timely manner. He could have reported to his Foreman when he saw him shortly after he threw the switch and felt the sharp pain in his back. He also could have reported the possible injury to the Roadmaster when he washed up after his shift, but he did not. Nor did he make any attempt to call either the Foreman or the Roadmaster at any time during the evening.

DECISION

The Claimant had an obligation to at least forewarn his Foreman of his possible injury. It was apparent from the description he gave of the injury on the 2611, that he may have pulled something in his back. An injury which more often than not worsens as the body cools down and the individual relaxes.

In addition, if it had not shown up immediately, there is evidence it began to be noticeable by quitting time. Truck Driver, B. C. Ware testified, "I don't remember what he said, but, he was walking towards the coach car, and I asked him, he looked like he was walking a little stiff, and he said something, but I didn't hear the reply." Surely, if someone else noticed, the Claimant should have as well. At that point, he could and should have sought out the Roadmaster and reported the injury before leaving the work site.

Less than six months earlier, the Claimant was issued 60 demerits for the same rule violation, namely "failure to promptly report personal injury of self". It is appropriate, under all of the circumstances, that the Carrier take the next step in attempting to educate the Claimant that there is a requirement to report possible injuries in a timely manner. The penalty issued in this case was reasonable and certainly meets the tenets of progressive discipline.

AWARD

The Claim is denied.


Carol J. Zamperini
Impartial Neutral

Submitted:

May 19, 1993
Denver, Colorado