

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - T. L. Nelson
Award No. 60
Case No. 60

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of twenty (20) days was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to sustain and support the charges by introduction of substantial bona fide evidence that the Carrier now be required to compensate Claimant for all loss of earnings he 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.

The Claimant alleges that he injured his back on November 2, 1987, near Redding, California while he was assisting his

co-worker in lifting a tie. He did not report the accident until November 20, 1987. On that date, he was taken to the Everyday Health Care Center where he was examined. After receiving medical treatment, he was removed from service.

On November 24, 1987, the Claimant received a notice of investigation. The notice advised the Claimant a formal hearing would be held on December 2, 1987, to determine whether or not he was responsible for violating the following rules of the Rules and Regulations of the Maintenance of Way and Structures:

Rule 806: REPORTING: All cases of personal injury while on duty or on company property must be promptly reported to the proper officer on the prescribed form.

Rule 5007: Every personal injury suffered by an employee and any injury to another employee or person of which an employee has personal knowledge, must be reported without delay, to his immediate superior prior to the completion of tour of duty. Employee and his immediate superior must thereafter, without delay and prior to completion of tour of duty, complete required reports on prescribed forms and furnish other required statements to the proper authority.

The Carrier believed the evidence from the hearing was sufficient to show a violation of the aforementioned rules and suspended the Claimant for twenty (20) days.

The Claimant has been employed by the Carrier for thirteen (13) years. During his tenure he has five accidents not

counting the one on November 2, 1987. He was, or should have been, well aware of the reporting requirements. He contends, however, that Rule 806 contains two other paragraphs besides the one reiterated in the charge letter. He urges that the last paragraph absolved him from reporting the injury earlier. The two paragraphs as reported in the transcript read:

Personal injuries occurring (sic) 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.

Further, an employee who sustains personal injury but does not lose time must notify proper officer if prescription, medication for treatment of the injury is taken or more than one physical therapy treatment is received for the injury or three, a doctor or other medical professional administers medical treatment for the injury on a second or subsequent visit. Exception: Notification is not required if visit was limited to a routine examination or progress or replacement of bandages or dressing.

Admittedly, the Circular reviewing Rule 806 is somewhat contradictory, this Board believes the first paragraph is absolute in its requirement that injuries be reported before the employee completes his/her tour of duty. The addition of the last paragraph does nothing to alleviate the obligation of employees to report their injuries in a timely manner. The third paragraph, while not perfectly worded, merely sets out particular circumstances where an employee, who is injured, but on the job, must continue to report to the proper authority. The Employee should have been familiar with the Rule at issue and when he found conflicting information within the same circular, he should have checked with his superior. This Board recognizes, as it has in the past, that there are occasions when

certain types of injuries do not show up for one (1) or perhaps two (2) days, but eighteen (18) days is a different matter. The Employee erred when he failed to make a timely report of his back injury. It is unfair to the Carrier to expect them to determine the circumstances of an injury when it is reported in excess of three weeks after the fact.

The Board believes the Claimant is partly to blame in this case, however, we do not believe the language contained in the Circular is clear enough that the entire blame should be placed on the Employee. This, along with the very fine record of the Claimant is definitely a mitigating factor and we believe progressive discipline should have been used. A much lesser penalty would have served the same purpose of attempting to modify the behavior of the Claimant. As this Board has urged on other occasions, in a majority of rule violations discipline is to be instructive not punitive.

AWARD

The claim is sustained in part; the twenty (20) day suspension will be reduced to a five (5) day suspension. The Employee will be reimbursed all wages in excess of this amount.


Carol J. Zamperini, Neutral

Submitted:

February 1, 1988
Denver, Colorado