

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30666
Docket No. MW-30943
95-3-92-3-832

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] imposed upon Machine Operator L. J. Braxton, for alleged violation of Rules L, N, 681, 684, 691 and Paragraph 1 of the Rules and Regulations for the Maintenance of Way and Signal Department, in connection with an injury sustained on December 7, 1990, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-440 KCS).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered, his seniority, benefits and vacation credits unimpaired and his record shall be cleared of the charges leveled against him."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant sustained an injury on December 7, 1990. Subsequently Carrier charged him with sustaining an injury and not reporting it timely. Following an extensive Investigation on these charges Claimant was disciplined with an actual five day suspension on the conclusion that he was in "violation of Rules L, N, 681, 684 and 691 of the Rules and Regulations of the Maintenance of Way and Signal Department."

Rule L exhorts employees to exercise care to avoid injury and refrain from using defective tools. Further, employees must inform themselves of the location of obstructions, be cognizant of the movement of trains and engines, avoid unnecessary standing or walking on tracks, prohibits unauthorized persons from riding on Company equipment, etc.

Rule N requires courteous deportment, prohibits insubordination and neglect of duty, bans horseplay, joking and scuffling on Company property, and requires accurate accounting of work performed and material used.

Rule 681, notes that rules cannot be written to cover every possible situation.

Rule 684 requires that a verbal report be made of an injury before the completion of the tour of duty, with those injuries requiring treatment other than first aid being reported on Form 68-D.

Rule 691 prohibits lifting beyond normal physical capabilities.

Review of the Investigation transcript discloses that there is insufficient evidence to support a conclusion that Claimant was actually in violation of any of the provisions of any of the cited Rules except that he did not verbally report the injury to his immediate supervisor before the completion of his tour of duty. Failure to report an injury timely is a serious breach of Carrier Rules, warranting discipline. A five day suspension for such a violation is not inappropriate. The claim will be denied.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.