

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35607
Docket No. MW-35380
01-3-99-3-252

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway Company
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Level S - thirty (30) day suspension from duty without pay assessed Section Laborer J. G. Brooks for his alleged falsification of a personal injury report in alleged violation of Safety Rules and General Responsibilities Rule 1.2.5 (c) under date of March 7, 1997 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File S-P-586-M/MWB 97-06-16AA BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Section Laborer J. G. Brooks shall now be compensated for all wage loss suffered, including overtime and any fringe benefits lost, and his record shall be cleared."

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 were given due notice of hearing thereon.

Although the Notice of Investigation referenced an alleged falsification of a personal injury report, the Carrier found the Claimant to have violated Rule 1.2.5 (c) pertaining to the timeliness of reporting injury information and completing prescribed reports.

The following facts are not disputed in the record. On Sunday, September 29, 1996, the Claimant sought chiropractic treatment for severe neck and shoulder pain. He did not know the cause. He reported the situation to his then Supervisor, Roadmaster Cunningham, on October 1, 1996. Cunningham had him complete Form 12504 Personal Injury Report. Because of the uncertainty surrounding the pain, the Claimant inserted the word Unknown in the form blanks corresponding with date, location, and how it occurred.

An MRI exam conducted on October 14, 1996 led to discussions with the Claimant's doctors that eventually traced the cause of the pain to an on-duty injury sustained on September 26, 1996 between 11:30 A.M. and 12:30 P.M. while unloading ties. The Claimant testified, without refutation, that he verbally reported this information to Cunningham in conversations in mid-October. The Claimant also said he provided copies of the medical documents to Cunningham. The Claimant did not, however, complete a new Form 12504 to supplement his earlier report. According to his testimony, he did not independently know a supplemental report was required and Cunningham did not provide a form to him for completion.

The matter thus remained dormant until January 10, 1997. On that date, Carrier Officials received a fax from a lawyer retained by the Claimant to purpose a claim for the injury. After comparing the fax with the Form 12504 containing the multiple references of "Unknown," the Notice of Investigation was issued on January 16, 1997.

Roadmaster Cunningham left the Carrier's employ sometime between mid-October 1996 and the date of the Investigation held February 5, 1997. As a result, he did not testify or provide a statement of any kind as part of the Investigation.

The Organization advanced several procedural objections to the conduct of the Investigation and challenged the sufficiency of the evidence in support of the Carrier's action. As a threshold matter, it objected to the timing of the Investigation. It asserted that Rule 40 established a 15-day time limit for preferring charges from the occurrence or date of first knowledge. In its view, the Rule required the Carrier to conduct the Investigation within 15 days of mid-October 1996. Because notice was not issued until the following January, the discipline is time-barred.

Rule 40 (J) reads as follows:

"If investigation is not held . . . within the time limits herein specified . . . the charges against the employee shall be considered as having been dismissed."

The Carrier maintained that it did not acquire first knowledge until receipt of the lawyer's fax on January 10, 1997. In its view, it complied with Rule 40 (J).

Careful review of the transcript of the Investigation compels us to reject the Carrier's position. Although other Carrier Officials may not have acquired first knowledge of the circumstances until January 1997, the same cannot be said of former Roadmaster Cunningham. The undisputed evidence in the record shows that he had full knowledge of the relevant circumstances in mid-October 1996. Moreover, because Rule 1.2.5 (c) is one Cunningham was responsible for enforcing, he must be held to the same level of knowledge about the Rule's proper reporting requirements as the Claimant. As such, the knowledge of the Claimant's failure to complete the proper reporting requirements of Rule 1.2.5 (c) must be imputed to Cunningham in the absence of explanatory testimony or other evidence to the contrary; no such evidence exists in this record. Accordingly, the Carrier was effectively foreclosed from pursuing disciplinary action after expiration of the 15-day time limit.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of July, 2001.