



May 14, 1981, claimant was charged with violation of Carrier rules in his actions in being careless and, hence, responsible for the accident which occurred and also being charged with failure to fill out the accident form, as required by Carrier's rules. The hearing was held subsequently on May 19, and thereafter claimant was found guilty and assessed thirty demerits.

Carrier argues that the evidence at the hearing indicated that the claimant had not used the safest available method in his functioning on the day on which he was injured. Further, Carrier insists that claimant's attitude was complacent with respect to the incident and could not be accepted by Carrier. In addition to which, of course, he failed to file the accident report in timely fashion. Carrier notes that the accident report was, indeed, filed on May 15, 1981.

The Organization argues vehemently that the claimant filled out the accident report on Friday, May 15, the Friday following the Sunday on which he was injured. Prior to that time, according to the Petitioner, he was not well enough to fill out the form. The doctor had given claimant a prescription that affected his mental ability and he felt ill, according to the testimony, and was simply unable to fill out the form sooner. According to the Organization, claimant did, indeed, fill out the report and the Trainmaster and conductor were informed of the incident in question and were well aware of everything that went on on the critical day.

Carrier's position in this matter seems somewhat anomalous. Claimant in this case was charged with violation of safety rules because he was injured. There is no evidence whatever in the record to indicate in what manner he should have conducted himself to avoid the injury in question. Thus, it is apparent that Carrier felt that he was injured because of some unspecified carelessness on his part which should not be tolerated. It is precisely this position which creates problems with employees filing accident reports. There is no evidence to support Carrier's position on this score. With respect to the second element of the charges against claimant, in his tardiness in filling out the accident report, a number of observations are important. First, Carrier's need to have such reports filled out promptly is

self-evident. Many boards such as this, including those on which this Neutral has served, have supported the position that accident reports must, indeed, be filled out promptly. Numerous awards have been cited by Carrier in support of this proposition. Carrier's needs for prompt information concerning an accident are evident, first, with respect to creating a safety hazard and, second, to avoid improper claims for liability. In this instance everything about the accident was known to Carrier's officials at the time that it was incurred. In fact, Carrier's officials assisted claimant to seek medical care immediately after the accident. Thus, there was no mis-information concerning the nature of the accident or the cause at any time in the course of this matter. With respect to this particular aspect of the alleged violation, it comes down to a matter of "how prompt is prompt". Was claimant wrong in waiting till the Friday following the accident to fill out the report? From the unrebutted evidence in the record, he was obviously ill on Sunday, Monday, Tuesday and Wednesday, at least, because of the blow to his head. Furthermore, he was on medication prescribed by Carrier's physician which, from again unrebutted testimony, made him dizzy and unable to properly function. Was his tardiness sufficient to warrant a charge and a finding of guilt, such as that which occurred in this case? This Board thinks not. In rules such as that involved herein, the prompt filing of an accident report must be governed by the particular circumstances involved. Obviously, if an employee is physically or medically incapable of filling out the report within two or three days, that must be taken into consideration in assessing discipline. It was not done in that fashion in this instance. If, on the other hand, there is no reason why an employee should not have filled out the report promptly, then the Carrier's position would, indeed, be persuasive. In this instance, it is not persuasive and no basis appears for the conclusion that claimant is guilty. The claim must be sustained.

AWARD

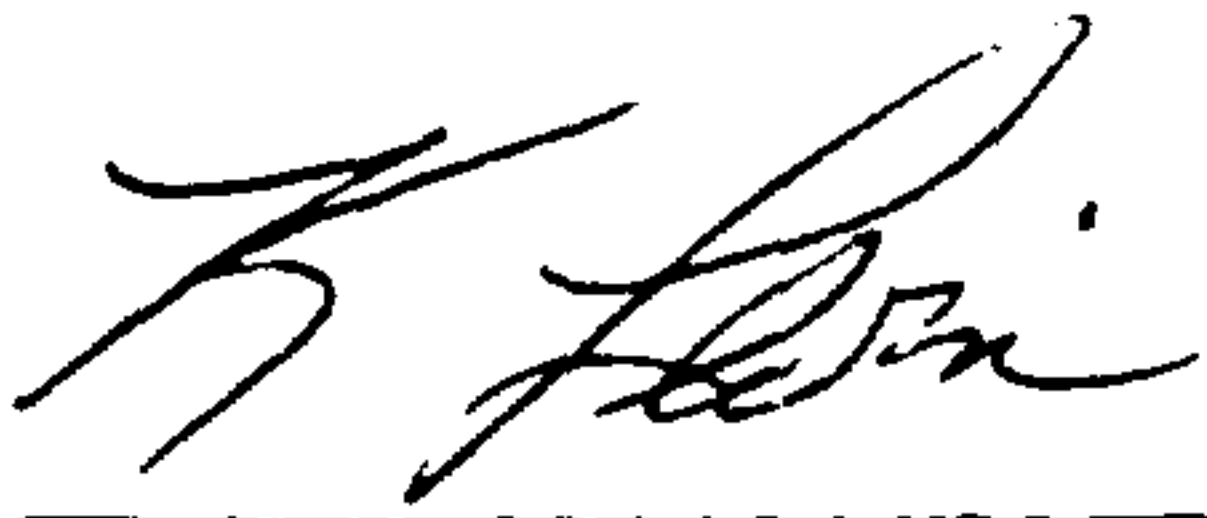
Claim sustained.

ORDER

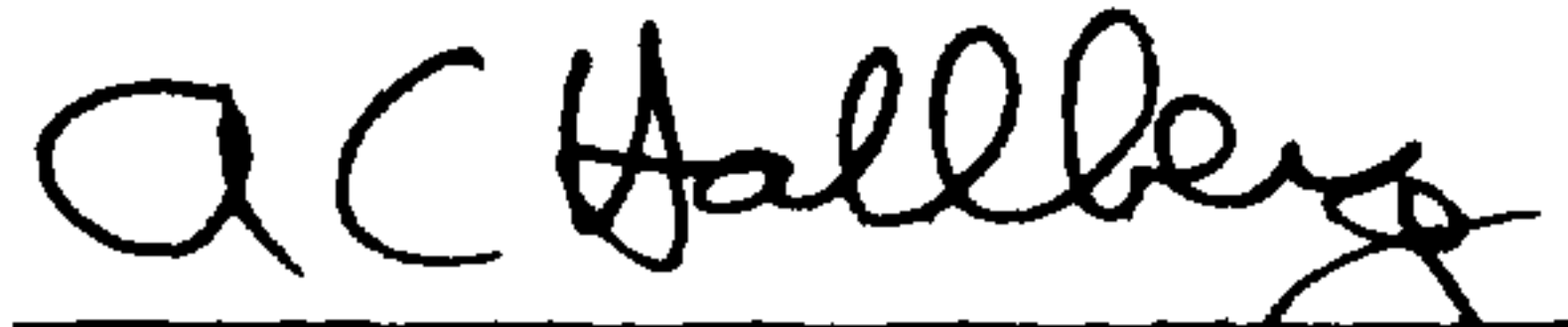
Carrier will comply with the award herein within thirty (30) days of the date hereof.



I. M. Lieberman, Neutral-Chairman



K. Levin, Employee Member



Alden Lott, Carrier Member

Salt Lake City, Utah

May 24, 1984