

The Board has carefully studied the entire record in this matter. We agree that, from the standpoint of due process, the Claimant received fair treatment. Accordingly, the Board will adjudicate this claim solely from the standpoint of the merits.

The investigation stemmed from a charge letter, issued on December 22, 2005, alleging that the Claimant “failed to exercise constant awareness and concentration while positioning yourself to release handbrakes with a brake stick, resulting in an injury, and all circumstances relating thereto.” During the investigation, Conducting Officer J. S. Baker introduced a plethora of Safety Rules, specifically 2006, 2250, 2253 and 2254¹ into the record. Carrier witnesses, Trainmasters M. L. Persinger and E. W. Knick, essentially testified that their investigation of the injury produced no evidence that the Claimant had violated any of the above Safety Rules. The witnesses also testified that the Claimant had complied with Safety Rule 2003, which required the Claimant to promptly report the injury to his supervisor, we note.

The Claimant reported for duty at 4:30 a.m. at Fulton Yard in Richmond, Virginia. His initial task before departing the yard was to release 10 handbrakes from the cars of his train which he did by using a brake stick. While returning to the head end of the train, the Claimant felt a twinge in his back, the record shows. During the road trip, the Claimant began to experience back pain and, at approximately 4:30 p.m., reported it to Trainmaster Persinger. At about 5:35 p.m., upon Train T70716’s arrival at Clifton Forge, Persinger met the Claimant at the platform and drove him to the hospital, where the Claimant was treated for a pulled muscle in his back.

The record is clear that the Claimant could not correlate his back pain with any particular task he had performed prior to departing the initial terminal. The Board significantly notes that, despite the persistent questioning by Conducting Officer J. S. Baker, neither Persinger nor Knick gave any testimony which established that the Claimant’s injury stemmed from his lack of attentiveness or improper use of the brake stick.

Upon our careful review of the record developed during the formal investigation, the Board finds no evidentiary support for the Carrier’s determination that the Claimant had performed his duties in violation of Safety Rules 2006 and 2254, and that his failure to adhere to those Rules precipitated the injury to his back. The investigation produced no eyewitness testimony regarding the manner in which the Claimant readied his outbound train by releasing the 10 handbrakes. Witnesses Persinger and Knick repeatedly testified that the Claimant

¹ Safety Rule 2006 – Protection Against Slips, Trips, and Falls; Safety Rule 2250 – Operating Hand Brakes; Safety Rule 2253 – Releasing Hand Brakes; Safety Rule 2254 – Using Brake Sticks.

had complied with all of the Rules entered into the record. Given their testimony, the tenacious questioning to which the Claimant was subjected was unnecessary and unwarranted. Questioning the charged employee in such a manner is often counterproductive to the investigation process, and may even rise to a due process breach, we note. Here, the testimony of the Carrier's witnesses, who were questioned prior to the Claimant, failed to establish that he had violated any of the pertinent rules. Such dogged questioning of the employee on the apparent chance that he might eventually give inconsistent or self-incriminating testimony was uncalled for and should not be repeated in future investigations.

The Organization clearly has the prevailing position in this matter, we hold. Again, the Carrier's finding that the Claimant was responsible for his injury because he had improperly used the brake stick, or had assumed an improper stance or had poor footing, lacks substantial evidence, we conclude.

Accordingly, in light of the entire record, and for the foregoing reasons, the Board rules that the instant claim must be fully sustained, as presented. In additional support of the Board's reasoning in this matter, see the following Awards rendered on this Carrier's property and involving this Organization: Award 8 of this Public Law Board No. 6916; Awards 72 and 181, and others, of Public Law Board No. 3882; Award 15 of Public Law Board No. 5983; and Awards 2 and 6 of Public Law Board No. 5972.

AWARD:

Claim sustained. The Carrier is ordered to comply with this Award within 30 days of its date.

Lynette A. Ross

Lynette A. Ross
Chairman and Neutral Member

James T. Klimtzak
James T. Klimtzak,
Carrier Member

J.R. Townsend
J.R. Townsend,
Employee Member

Dated: January 10, 2007