

PUBLIC LAW BOARD NO. 5760

PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of KCS Conductor Jeffrey W. Giacometti for return to service with seniority unimpaired and pay for all time lost, pay for any expenditures from health and welfare which may be due, without deduction of outside earnings, if other than received from the Carrier, and all notations removed from his personal work record. (UTU File: 0113-05-0763(D); Carrier File: K0206-7586)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The discipline here on appeal arises out of a Carrier finding that Claimant was guilty, as charged, of "failure to properly report and or late reporting of a personal injury" in violation of Rule 1.1.3, Accidents, Injuries and Defects, and Rule 1.2.5, Reporting, which require all cases of personal injury that occur while on duty to be immediately reported to the proper manager and the prescribed report (Form 68-D, Employee Report of Injury and Illness) be completed and submitted to the Carrier.

Claimant was present for the company hearing and acknowledged that he was aware of the aforementioned rules.

As developed at the hearing, Claimant presented a Form 68-D to the Trainmaster on May 10, 2005 on which form Claimant stated that he has "Carpal Tunnel Syndrome – Hands and Arms." Claimant listed this as an on-the-job injury that occurred as a result of "Repetitive Nature of my work," tying hand brakes and performing other train service duties.

Asked why he had not reported the alleged on-the-job injury to the Carrier sooner, Claimant said that after seeing the doctor for an appointment on May 5, 2005 that a weekend had intervened, and when he subsequently went to the Yard Office on May 8 or 9, 2005 he could not find a Form 68-D. Claimant said that he did thereafter find a copy of the form at the Maintenance of Way office and took it home to complete it. Claimant could not recall who gave him the Form 68-D, and

acknowledged that he had not meantime or at the time after he picked up the Form 58-D been in communication with any Carrier supervisory official to report the alleged on-duty injury.

Claimant also acknowledged on examination that when he could not find a Form 68-D that he could have contacted the Chief Dispatcher or Train Dispatcher to notify them that he had something to report and needed a copy of the form. Further, Claimant admitted on examination that he had previously been given the telephone numbers of the Trainmaster and Assistant Trainmaster to contact about work-related matters, stating: "Yeah, I've got them, but I'd have to look for them."

There is no question, as Claimant and the Organization argue that carpal tunnel syndrome is not a condition that suddenly appears but is rather a condition that develops over a period of time and has an accumulative affect on individuals. It nevertheless seems that in having scheduled an appointment with a doctor that Claimant knew or had reason to believe even before May 5, 2005 that if he was going to cite the condition as work-related he need immediately report such a condition to the Carrier. However, he failed to do so. As stated above, Claimant did not report this condition as being an on-the-job injury until May 10, 2005. Moreover, even if it was to be accepted, *arguendo*, that Claimant has carpal tunnel syndrome, nothing of evidence was presented to establish that it was work-related.

As this and other boards have held, there is no question that the prompt reporting of on-the-job personal injuries is highly important and necessary given a common carrier's potential liability for such matters so that it may arrange for any necessary medical treatment of the injured employee and proceed to timely investigate the purported cause of the injury so that it may take such action as found necessary to correct any dangerous condition.

The Board finding no reason to hold that the Carrier acted without just cause or in bad faith in the administration of discipline, we have no basis to here substitute our judgment for that of the Carrier as to its dismissal of Claimant from service. The claim will, therefore, be denied.

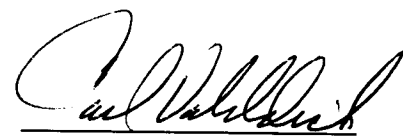
AWARD: Claim denied.



Robert E. Peterson
Chair & Neutral Member



George F. Leif
Carrier Member



Carl Vahldick
Organization Member

Kansas City, MO
Dated: 9/28/07