

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt & Terminal Railway Company violated the Agreement of September 1, 1949, as amended, particularly Rule 29, when they unjustly suspended Carman J. E. McCain from service for a period of sixty (60) days beginning May 17, 1972.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Carman J. E. McCain in the amount of eight hours (8') per day, five (5) days per week beginning May 17, 1972, covering the period of the 60-day' suspension, and that during this time he be allowed all benefits accruing to any other employee in active service.

Findings:

The Second 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 J. E. McCain, a car inspector in Carrier's employ at South Yards, received the following letter under date of March 14, 1972:

"Report to the Superintendent's Office, Room 203, Union Station, Houston Belt & Terminal Railway Company, Houston, Texas 1:30 P.M. Tuesday, March 21, 1972 for formal investigation to develop facts and place responsibility if any in connection with the charges that you failed to report promptly an alleged injury claimed by you and for your failure to promptly make out a personal injury report as prescribed on Form 60-HB as reported to Doctor Bill Robins, Chief Surgeon, Houston Belt & Terminal Railway Company on March 10, 1972.

Bring any witnesses desired by you and representation as provided in your working agreement.

(Signed) B. C. Adams
Superintendent"

Following several postponements the investigative hearing was held April 5, 1972. Subsequently, Claimant was assessed 60 days suspension effective May 17, 1972 on the grounds that he had failed promptly to report an alleged injury and make out the personal injury report. Appeals of this discipline on the property were declined by Carrier and the claim comes to our Board for resolution.

Claimant testified throughout the proceedings on the property that he injured his knee working on a caboose in Carrier's South Yard while working the 11:00 p.m. to 7:00 a.m. shift commencing Tuesday, February 1, 1972. Careful review of the hearing transcript indicates admissions by Claimant that he did not make out a Personal Injury Form HB-60 at the time of the alleged injury or any time thereafter. Similarly by his own admission he sought medical attention no sooner than 3 days after the alleged injury occurred.

The Claimant was charged with violating Rule F of the Uniform Code of Safety and General Rules reading as follows:

"Rule F - Employees must report promptly to their immediate supervisor all injuries, no matter how trivial. In every case of personal injury in any branch of the service, a full and complete report must be made at once on prescribed form. They must obtain immediate first aid and medical attention for all injuries, when necessary." (Emphasis added)

From our review of the record, there is no doubt that Claimant failed to make out the required report. Carrier emphasizes the importance of employees promptly and accurately reporting injuries for the protection of all parties involved. The validity of this position should be self-evident. The record adequately supports the conclusion that Claimant violated this rule.

Notwithstanding the foregoing conclusions, we are of the considered judgement that 60-day suspension is too harsh in the circumstances of this case. Claimant is an employee with 17 years service and the record shows no prior violations of safety rules. Accordingly, the discipline should be reduced to 30 days suspension effective May 17, 1972. Thus Carrier shall pay Claimant for the days he would have worked but for the second 30 days of the 60-day suspension.

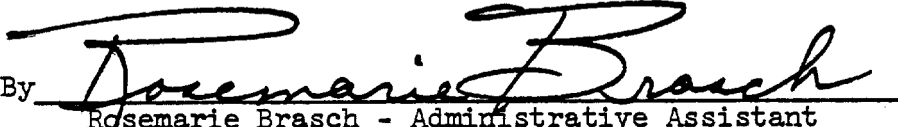
A W A R D

Claim sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1974.