

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That, as a result of an investigation held on Tuesday, March 18, 1980, Temporary Carman Robert J. Kuryga was given a letter of discipline which was placed permanently in his personal file. Said discipline given to Mr. Kuryga is unfair, unreasonable, arbitrary, capricious and in violation of Rule 100 of the Agreement.
2. That the Elgin, Joliet and Eastern Railway Company be ordered to remove the letter of discipline from the personal file of Mr. Kuryga.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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, Mr. Kuryga, was notified by letter to appear for an investigation on March 18, 1980. The letter outlined the purpose of the hearing:

"To develop all facts and to determine your responsibility, if any, in connection with your failure to report an alleged injury that allegedly occurred at 3:30 P.M., Friday, March 7, 1980, but was not reported until approximately 8:00 A.M., Monday, March 10, 1980, in violation of Rules 1 and 2 of the Safety Rules Governing Maintenance of Equipment Employees."

The investigation was held at scheduled and following that hearing, which was conducted in accordance with contractual requirements and past practice, the penalty herein complained of was assessed.

There is no controversy in the record regarding the facts in this case. Claimant testified that on March 7, at approximately 3:30 P.M., an action occurred which caused him to feel a twinge in his back, which he described as "like a

Charley-horse". He did not report the incident to his supervisor claiming that he did not feel he was injured and that it would work itself out. Later that night it got worse and his wife took him to the emergency ward at the Hospital on Sunday. The incident was reported to the Carrier, by Claimant, on Monday morning, March 10.

In assessing penalty the Carrier relies on Rules 1 and 2 as outlined in the charges. They read in pertinent part:

- "1. Employees who are injured while on duty must immediately report this injury to their Supervisor or person in charge...
2. Foreman or other person in charge must be notified immediately of any personal injury to an employee on duty ..."

Claimant testified that he was familiar with the safety rules. The importance of such rules, both to the employee and the Carrier, are so well known and understood by railroad men that we need not burden this award with an explanation. The rules require that the employee report any injury. One can readily appreciate the fact that the application of the rule would be rendered meaningless if each individual were allowed to determine what injury to report.

The record reveals that Claimant had previously had a back injury which should have alerted him to a possible problem. It is well understood that this Board is not in a position to determine credibility of witnesses. That function is reserved to the investigatory procedure.

The Organization seeks to attack the hearing officer's judgment in this regard by introduction of a letter from Claimant's doctor which essentially says matters of determining injury should be left to physicians. In general, such a statement would not provoke dissent. However, the problem before this Board is not to judge injury but rather to determine if the reporting rule was violated. In this connection, the doctor simply states that he though Claimant was "honest in his presentation" that he did not have a great deal of pain initially. The rule does not require a great deal of pain initially. It requires that all injuries be reported.

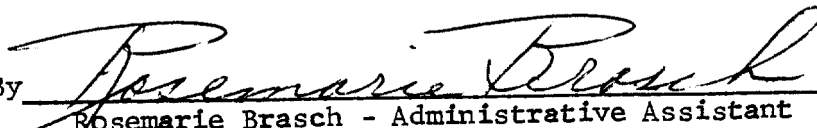
We find no credible evidence in the record to determine that the findings of the Hearing Board were in error. Consequently, we have no alternative but to uphold the decision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.