

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
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That, Michael G. Gardner was unjustly dismissed from all service of the Chesapeake and Ohio Railway Company effective March 14, 1979, as a result of an investigation held at Flint, Michigan, at 10:00 A.M., Thursday February 22, 1979.
2. That, accordingly the Chesapeake and Ohio Railway Company compensate Carman Michael G. Gardner his applicable straight time rate of pay from March 14, 1979, until restored to service.
3. That, accordingly Carman Michael G. Gardner be reinstated to service with seniority rights unimpaired and compensated for wages lost.

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. Gardner, was notified by letter dated February 9, 1979 to appear for an investigation on February 15, 1979. The charge read:

"You are charged with violation of Safety Rule 101, Shop Craft Rule 42 and that you failed to file Injury Report CJ-68 as soon as possible, as required by the rules, and falsely claiming injury to your hip and shoulder at 10:30 A.M. on December 30, 1978."

The investigation was postponed at the request of the Organization and held on February 22, 1979. The hearing was conducted in accordance with contractual requirements and past practice. Following that investigation the penalty herein complained of was assessed.

The record reveals that the problem under consideration started on December 17, 1978. Claimant while crossing between two cars slipped on a coupler and fell

to the ground. He filed a CJ-68 report stating that his nose and left hip had been injured. Treatment was received for the stated areas of injury and Mr. Gardner returned to work. On January 22, 1979 he informed his supervisor that he would not be able to work on January 23 because he was sick. On January 24 he appeared on the property and informed a foreman that he was having trouble with his right shoulder and thought it was bursitis. Later after deciding not to wait to see his supervisor who was in a safety meeting claimant went into the Repair Track Office and filled out a CJ-68 form. That form alleged that he had injured his hip, body and shoulder at approximately 10:30 A.M., December 30, 1978. Mr. Gardner avers that he was asked to fill out the form on January 24 otherwise he would have relied on the original one filed on December 17. That self-serving claim simply does not square with the testimony of his supervisors and the female clerk who talked to Mr. Gardner. She testified that in addition to filling out the form, he stated, among other things, that if the Carrier wanted any more information it could talk to his attorney. The credible evidence in the record clearly reveals that claimant filled out a form on January 24 claiming injury on December 30, 1978. Further, the record reveals that claimant was not working on December 30, at the location where he claimed to have received the injury. If he in fact had received the injury as claimed the report time was well beyond the requirements of the Rule. The preponderance of credible testimony further indicates that claimant did not tell the truth on January 24 when he filled out the report. The foregoing constitutes violation of the rules as charged. Some form of corrective action was merited. In assessing penalty the Carrier reviewed Mr. Gardner's past performance. It was far from exemplary and included among other factors a previous discharge for falsely claiming an injury. He was adjudged guilty by an N.R.A.B., Second Division award but was returned to service without back pay because under the circumstances dismissal appeared to be excessive penalty.

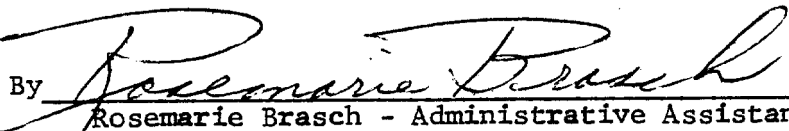
In view of the foregoing and the entire record we find that the Carrier was within its legal rights to dismiss Mr. Gardner.

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.