

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That Carrier violated the terms of the controlling Agreement, specifically Rule 32, when they improperly subjected Carman W. E. Still, to an investigation--held on the date of October 30, 1979 at Dayton, Ohio, at 10:00 A.M. at General Mechanical Foreman's office, that the charge against Carman Still, as alleged, by Carrier, was unjustifiable, unrealistic, unsubstantiated, uncalled for, unfounded, unreasonable, and unfair and partial.
- No. 2. That Carrier is guilty of impropriety with regard to the handling of this claim on the property, subsequently in violation of Article V, TIME LIMIT ON CLAIMS OR GRIEVANCES, effective January 1, 1955.
- No. 3. That Carrier be ordered to remove the "entry" on Carman Still's "service record", such being the discipline administered by the Carrier, account Carman Still allegedly being found at fault for failure to comply with Rule 101 of the Book of Safety Rules dated October 1, 1968, in connection with alleged injury of June 18, 1979.

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.

The Claimant in this case was employed as a Carman at Carrier's Dayton, Ohio facilities. While on duty on June 18, 1979, Claimant experienced severe pain in his lower abdominal area while closing a freight car door. Claimant made no report of this incident to anyone. Later on June 30, 1979, he experienced a similar pain in the same area and, without notifying Carrier, visited a local hospital for treatment. He allegedly was examined and released with no diagnosis. Subsequently, on July 3, 1979, Claimant for a third time experienced pain and swelling of the lower abdominal area and again visited the hospital where he was this time diagnosed as having a double hernia. It was not until July 5, 1979 that Claimant, for the first time notified Carrier that he had sustained an injury on June 18, 1979.

An investigatory hearing was scheduled for October 16, 1979 (postponed to October 30, 1979 at request of the Employee Representative) and an entry on Claimant's service record was administered as discipline by letter dated November 19, 1979.

Both Petitioner and Carrier contend that the other is guilty of procedural violations in their respective handling of this dispute. We have reviewed all of the record and argument and can only conclude that neither party in this dispute is completely free of blame. The handling of this case will never be used as a text book example of proper disciplinary procedures. For this reason we reject the procedural contentions of both parties and will examine this case on its merits.

Claimant readily admits that he experienced pain while performing his duties on June 18th. He contends that he did not think he was injured, so he made no timely report of the incident. When the same type of situation recurred on June 30th, he again did not believe he was injured. It was not until the third episode occurred on July 3rd that he realized he had, in fact, sustained a hernia on June 18th and made a report on July 5th.

The safety rule in this regard is clear. It requires that action be taken relative to the injury "before his tour of duty ends, or as soon thereafter as possible...". This Board is in complete agreement with the Carrier that Safety Rules of this type are important and merit full and complete attention from the employees. There is no doubt that prudent and cautious action would demand that an employee, who felt pain of the type here involved in his lower abdomen resulting from work effort, report it to his immediate supervisor. This belief is doubly strengthened by the fact that there were three (3) such episodes of job related pain before a report was made. Given this fact situation, Carrier has the right to impose discipline. The assessment of a mark of censure by Carrier is not arbitrary or capricious.

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 15th day of June, 1983.