

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the controlling agreement of September 1, 1949, as subsequently amended, when on December 2, 1981 Upgraded Carman D. P. Adkins was given a formal investigation resulting in an unjust assessment of five (5) day deferred suspension against his service record.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning and intent of Rule 37 of the controlling agreement.
3. That because of such violation and unjust action, the Norfolk & Western Railway Company be ordered to remove the five (5) day deferred suspension against D. P. Adkins' service record.

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 employes 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 is employed by the Carrier as a Carman at its facility located in Portsmouth, Ohio. Following an investigation that was held on December 2, 1981, the Claimant was assessed a five (5) day deferred suspension for his failure to timely report an injury in accordance with NW Safety Rule 1001 which in relevant part provides that: "Employees must report personal injuries to their immediate supervisor *** before leaving the Company's premises *** Failure to report a personal injury by the injured person or the employee in immediate charge of the work may result in disciplinary action ***."

Between July 27 and July 31, 1981 the Claimant was on medical leave for the purpose of undergoing surgery on his left wrist. In late October, 1981 the Carrier's Claim Department contacted General Foreman Corea requesting the details of an on-duty injury reported to them by the Claimant. The Claimant stated that the injury had resulted in the operation on his wrist in July, 1981. A check of the Carrier's records revealed that no such injury had been reported.

A statement was subsequently obtained from the Claimant on November 4, 1981 in which he stated that in October or November, 1980, while working on the coupler of a hopper car, he fractured a bone in his wrist. Another examination of the Carrier's records revealed that no report had been made of an injury to the Claimant during October or November, 1980, and that he lost no time from working during those months.

After carefully examining the record, the Board is persuaded that the Carrier properly carried its burden of proving that the Claimant failed to comply with the terms of NW Safety Rule 1001. Gang Leader Van Bibber, who brought the instant charges against the Claimant indicated that he (the Claimant) first reported the injury to his wrist, to him, on November 4, 1981. On the other hand, the Claimant said that he reported the injury when it happened. Yet, he could not remember how it happened or when the accident occurred because "it has been a long time ago." In support of the Claimant, Carman Yates testified that he had been working with the Claimant when the injury occurred and that he was present when the Claimant reported the incident to Van Bibber. However, like the Claimant, he could not recall, "exactly" how the Claimant's injury occurred; nor could he recall when it occurred.

Since credibility is an issue in this case, it should be pointed out "**** it is the function of the trier of facts to determine the credibility of witnesses; so long as there is no arbitrary or capricious judgment used in making that determination, this Board will not interfere with Carrier's conclusion in that respect ***." First Division Award 14863. The Board cannot conclude that the determination by the trier of facts on the issue of credibility and in support of Van Bibber's version, is arbitrary or capricious. Reinforcing this conclusion is the Claimant's failure to promptly file an injury report in order to make sure that medical attention would be quickly provided and that the injury would be covered by insurance. Indeed, given the magnitude of the injury, it is unreasonable to believe that the Claimant would have failed to seek medical attention promptly or at least a reasonable time after the injury occurred, rather than roughly, seven (7) to eight (8) months later. Moreover, it is of some weight, that on November 4, 1981 when the Claimant filed his formal report concerning his injury, he did not list Carman Yates as a witness to the injury.

The importance of reporting personal injuries as required under NW Safety Rule 1001 cannot be disregarded. It is axiomatic that in the interests of both the Carrier and the Employees, Safety Rules must be scrupulously followed. See Public Law Board 2430, Award No. 12. The Carrier has satisfied its burden of proving that the Claimant failed to report his injury for some thirteen (13) or fourteen (14) months after the injury occurred. Accordingly, the Claimant has violated NW Safety Rule 1001.

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Award No. 10470
Docket No. 10293
2-N&W-CM-'85

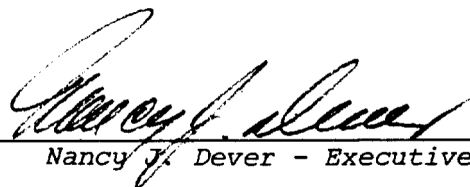
Thus, it is the Board's judgment that the discipline assessed against the Claimant of five (5) day deferred suspension is not excessive; nor is the "Carrier's action so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion ***." Second Division Award 1323.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.