

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

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

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the contractual rights of Claimant, Carman, William D. Rawnsley, Cumberland Maryland, when on the date of May 20, 1983, Carman Rawnsley, was unjustly subjected to an unfair and partial hearing (Rule 32 of the controlling agreement), as a result of an incident which occurred on the date of March 6, 1983, involving personal injury to claimant; that claimant was unjustly deemed guilty of such alleged charge, and disciplined to the extent of "thirty (30) days overhead suspension for a six (6) month probationary period."
2. That accordingly, Carrier be ordered to withdraw the alleged charge against Claimant, that the discipline administered be declared null and void, and claimant's service record be cleared accordingly.

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 was employed as a Carman at Cumberland, Maryland. On March 6, 1983 he was working as a member of the wreck crew clearing a derailment at West Virginia Central Junction.

In lieu of using the derrick, the crew was instructed to use the car replacers. The rain was falling at the time. The Claimant was carrying a replacer when he lost his grip, turning his wrist and falling on his right wrist.

On March 18 he made a report on a form identified as CJ68 claiming an injury at 6:00 PM on March 6.

On April 8 he was ordered to attend investigation on a charge of failure to report the occurrence of a personal injury before the end of his tour of duty on March 6, 1983 in violation of General Rule 1, Book of Safety Rules.

The investigation was postponed several times and ultimately convened on May 20.

The Claimant testified that as soon as he felt pain he reported it to his immediate Supervisor, the relief Train Foreman who responded that he was not working the Foreman job but that Mr. Sibley was. The Claimant said he then reported the matter to Mr. Sibley in the tool car. Mr. Sibley was not at the investigation. And we do not know who he was and what his responsibilities were.

Mr. H. W. Plum, a witness called by the Claimant, a co-worker on the crew at the time, testified that he heard conversation between the relief Train Foreman and the Claimant concerning the injury and that the relief Train Foreman said he wasn't in charge but that Paul Sibley was, and that the discussion was in the diner.

Mr. Plum also testified:

"That was the only time I heard that statement, but Billy (the claimant) told me when he crawled up on the base of the crane that he had hurt his wrist handling the replacer and I told him he better get an accident form filled out."

The Claimant testified that no one in charge instructed him to fill out an accident form and that he did not do so until March 18, 1983 after he had talked with the Local Chairman.

The relief Train Foreman testified that he did not remember exactly what took place after the crew was asked to get the replacers but that he did see the Claimant carrying the replacer. He stated that the Claimant did not report to him that he had hurt his wrist; that he heard no one in the relief crew say that the Claimant hurt his wrist on March 6 and finally that he did not know the exact date he heard it mentioned by someone and that the first day he knew it officially was on March 18, following which he wrote a letter to General Car Foreman J. G. Boyd.

General Foreman R. F. DeVore testified that he was working in Cumberland on March 6 and was not aware of the Claimant's injury on that date; that he had a conversation with the Claimant on approximately the 16th or 17th and that there was some conversation about an injury in a joking way but that he did not take the conversation seriously for he would never joke about an injury. He stated that the Claimant had worked for him a good many years and they kid back and forth. In conclusion he further stated:

"He did not report to me that he was injured in a way that I took him seriously. This occurred as he was leaving the office for a work assignment."

General Car Foreman J. G. Boyd was at the derailment on March 6 and at the time the relief train was working. He testified that he was not aware at the time of the Claimant's injury; that he saw the Claimant when the work was completed; that the Claimant did not mention the injury to him and that the Claimant did not ever talk with him about the injury prior to March 18.

The Organization contends that the Claimant was subjected to an unfair and partial hearing on a charge that was not proven by the Carrier. In pursuance of that contention, the Organization asks:

"...did claimant report this injury to his immediate supervisor at the time of occurrence?"

and sets out to submit its analysis of the testimony in the Transcript to support an affirmative answer, underscoring and discussing the testimony that suits its position.

The Organization concludes that the Claimant did report the injury at the time of the occurrence; that witness Plum corroborated the report and that the Supervisors should have followed up with the report form for the Claimant and that the charges were not proven against the Claimant.

The Organization then holds that the discipline assessed was extreme and unmerited, unjust and unfair.

Conversely, the Carrier contends that the investigation was fair and impartial, that the Claimant was guilty as charged and that the discipline imposed was fully justified, citing, underscoring and discussing the testimony that suits its position.

Reviewing the positions of both parties to this proceedings and considering the record again and again, we find the results to be the same as recounted in our overview of the testimony as set forth when we began to write these Findings. We were of the view then and share that view now that while there is some conflict in the testimony and an indication of obfuscation as to what actually took place as to reporting of the injury at the derailment, we do know from the record that the written report of the matter as called for in General Rule 1 of the Safety Book of Rules was not made until March 18, twelve days after the injury of March 6.

The Claimant worked on March 9, 10, 11, 12 and 13 but did not file the written report until March 18.

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We find that Safety Rule 1 was cited in the investigation notice, read into the record and again cited in the notice of discipline following the investigation.

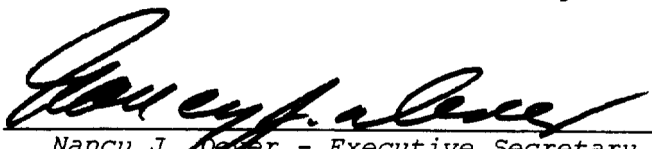
We find that the Claimant was accorded a fair and impartial investigation and that the disciplinary action by the Carrier was not unreasonable or excessive. We must, therefore, deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.