

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That the Belt Railway Company of Chicago erred and violated the contractual rights of Mr. Edward D. Vojcak when they removed him from service on August 10, 1984 at 4:00 p.m. as a result of an investigation held on August 1, 1984 at 9:00 a.m.
2. That the investigation was neither fair nor impartial.
3. That, therefore, he be returned to service with seniority and all other rights, benefits and privileges restored; and,
4. That he be compensated for all lost time including overtime and holiday pay; and,
5. That he be made whole for helath (sic) and welfare benefits,
6. That he be made whole for all vacation rights; and,
7. That he be made whole for pension benefits, unemployment, and sickness insurance; and
8. That he be made whole for any and all other benefits, not mentioned herein, that he would have received or would have earned had he not been withheld from service.

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 were given due notice of hearing thereon.

Claimant, Edward D. Vojcak, was an Electrician in the employ of Carrier on August 1, 1984. On that date his actions were the subject of an Investigation in which he was charged with:

"to determine your responsibility, if any, in connection with your alleged failure as required by Company Rules to report or identify a personal injury which was alleged to have taken place prior to June 26, 1984, at 6900 South Central Avenue, Chicago, Illinois.

Management's first knowledge being June 26, 1984 from the law offices of Brobyn and Forceno, whose address is The Philadelphia Bourse, Independence Hall East, Philadelphia, Pennsylvania 19106, which Mr. Vojcak has retained in claim for damages against the Belt Railway Company of Chicago."

As a result of the evidence adduced at the Investigation, the Investigating Officer held that the charges had been proved and dismissed Claimant from Carrier's service effective August 10, 1984. The Carrier notified Claimant on October 12, 1984, that the dismissal was being reduced to a sixty five day suspension.

Claimant testified that he discovered on June 22, 1984, as a result of medical tests, that he had contracted asbestosis. The Carrier was notified of Claimant's condition by letter dated June 26, 1984, from a law firm representing Claimant. The letter stated:

"Dear Sir/Madam:

Be advised that we have been retained by the above named individual to pursue an occupational disease claim against the railroad. . .

Preliminary medical testing indicates that our client suffered injury and damage due to an unsafe and unhealthy workplace. Consequently, be on notice that we will be investigating and pursuing the claim for our client.

Feel free to contact this office for particulars regarding the claim.

Signed"

After receipt of this letter the charges were filed.

The Carrier contends that Organization was in violation of Rule P which states:

"RULE P

Personal injury while on duty must be reported at once to your immediate superior officer or supervisor, giving full detail as to how injury occurred. Officer or Supervisor will upon receiving such report, phone the Belt Police Department office full particulars as to name, nature of injury and pertinent details."

Claimant contends that injury as described in the Rule relates to some traumatic physical injury deserving of immediate attention, i.e. a broken arm. Claimant testified that he did not consider a disease to come within the meaning of the Rule. He admitted that he was familiar with the reporting requirements of the Rule.

The Carrier would have Claimant convict himself through the letter of his agent, the law firm. It claims that the allegation of the firm that Claimant suffered injury due to an unsafe and unhealthy workplace is an admission that the disease was an injury contemplated by the Rule.

Black's Law Dictionary defines injury as "To violate the legal right of another or inflict an actionable wrong". An attorney must describe a cause of action in accepted legal jargon. To say that an employee had contracted a disease because of an unsafe workplace is not to describe legally an event capable of being addressed by a court. When the attorney informed the Carrier that Claimant had suffered injury and damage, the reference is obviously to concepts which have legal consequences. Therefore, the Board cannot accept this contention as an admission of wrongdoing.

The literal wording of Rule P would indicate that the authors thereof had an immediate injury in mind. The likelihood of an employee suffering from asbestoses being able to report in full detail how the injury occurred is small. The second requirement that the Supervisor immediately report the injury to the Belt Police Department would seem to serve no useful function in the case of a disease.

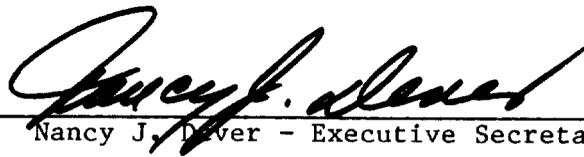
The Board holds that the Rule was not designed to encompass gradual diseases such as the one suffered by the Claimant. We find that he was not derelict in his duty by not reporting his discovery in the manner specified by Rule P.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.