Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11742
SECOND DIVISION Docket No. 11594
89-2-88-2-80

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer C. Bragg, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company, effective September 9, 1987.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Bragg whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his 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 were given due notice of hearing thereon.

An investigation was held on Wednesday, September 2, 1987 to determine whether Claimant failed to report an injury allegedly sustained circa July 10, 1987 on Carrier's property. Based on this proceeding, Carrier concluded that he failed to report the asserted injury in timely fashion, as required by Safety Rule 1, and he was removed from service, effective September 9, 1987. His disciplinary record, which included several suspensions was factored into the disciplinary determination. The above Rule reads, in part, as follows:

"Rule 1(A)

All personal injuries, no matter how slight, must be reported at once by the injured employee to his immediate supervisor. When physically able to do so, employee must report the injury to his immediate supervisor before leaving Company property."

In defense of his petition, Claimant contended that he didn't immediately apprise Carrier of his injury, since he didn't feel he was injured at the time of the accident and had not intended to report the accident once he had determined he was injured. He noted that he had worked from the time of the injury (circa July 10, 1987) up until August 9, 1987 when he informed his foreman that he was under medication due to the injury. Ostensibly he was sent home for the period of time he was taking the medication. He further pointed out that when he returned to work on August 19, 1987, he submitted a doctor's note, which indicated he was under medical care. He observed that he filled out the accident report only at the insistence of the chief clerk.

In rebuttal, Carrier maintained that it wasn't informed of the purported accident until August 19, 1987. It asserted that he neither reported the accident on the date it allegedly occurred nor at the time he met with the foremen on August 9, 1987. It noted that he was mindful of the procedures regarding injury notification and reporting, since he faithfully complied with these procedures in the past. (See Claimant's personal file for a record of previous on-situs injuries. Carrier's Exhibit B) Furthermore, it argued that because of the potential exposure to tort liability arising out of employee assertions of on-the-job injuries, Safety Rule 1 was vigorously enforced.

In considering this case, we concur with Carrier that Claimant failed to comply with the applicable accident/injury notification rule. In the case at bar, even assuming that the incident was indeed minor, Claimant had an obligation to report it pursuant to Safety Rule 1. The record shows he was aware of these procedures, and, in fact, had complied with them in connection with past injuries. However, even assuming there was a delayed injury effect, Claimant did not submit a doctor's note until August 19, 1987. The doctor's note, dated August 18, 1987 does not say when he was first examined or that he was on a prescribed medication. A follow-up medical report at the investigation would have clarified these and other related questions. He asserted that he informed his foremen on August 9, 1987 that he had sustained the injury, but the record evidence does not support this assertion. There is conflicting testimony on this point and he has the burden of proof (affirmative defense) to establish that he so apprised them. From the record, the first indication of notification was August 19, 1987 and, it was palpably belated and contrary to Safety Rule 1. Under these circumstances, Carrier had the right to initiate disciplinary action. In considering the penalty, we do not believe that dismissal is warranted, since it is excessive, given the nature of his infraction. In view of his past disciplinary record and consistent with the principle of progressive discipline a suspension to date of reinstatement is justified. Accordingly, he is to be restored to service, but without back pay. There is no evidence as to whether or not he was injured on the job, circa July 10, 1987.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1989.