

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12885
Docket No. 12825
95-2-93-2-194

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (CSX Transportation Inc. (former Chesapeake
(and Ohio Railway Company)
(
(International Brotherhood of Firemen and
(Oilers

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Fireman and Oiler W. P. French, ID# 622411, was unjustly dismissed from service on June 2, 1993, by CSX Plant Manager D. K. Jones.
2. That accordingly, Firemen and Oiler W. P. French be restored to his position on the proper Firemen and Oilers seniority roster and in the event of a future recall which would return him to service, he be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective date of recall, the payment of 10% interest rate added thereto, and her (sic) record expunged of any reference to this discipline."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within in 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.

Claimant was charged with:

"... falsely claiming an on-duty injury, which you state occurred on or about March 9, 1990, at Raceland Car Shop...." and "... further charged with failure to file a timely report of such alleged injury in violation of CSX Transportation Safety Rule 40."

The Investigation was held on May 6, and by letter dated June 2, 1993, Claimant was dismissed.

The operative Rule (Rule 40) reads, in part:

"An employee, if physically able to do so, must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while on duty or on Company property. Upon receipt of such report, the employee in charge or the supervisor must make a prompt written report of the injury. The injured employee must furnish the written injury report on the prescribed form; or if the injured employee is unable to do so, the required report must be furnished by the supervisor or by the employee in charge."

On February 17, 1993, the Carrier became aware that Claimant filed a lawsuit in regards to alleged occupational exposures causing respiratory illness and hearing loss damages as well as a March 9, 1990, personal injury. On March 3, 1993 the Senior Claim Agent requested a copy of Claimant's personal file. The Plant Manager was copied and by letter dated March 4, 1993 Claimant was served notice of the Investigation because no written injury report was on file.

It is clear that the time limits set forth in the discipline Rule were not violated. The Rule relative to the notice of charges states:

"Where the Carrier believes that there may be cause for disciplining an employee, it shall, within ten (10) days from the date of the occurrence or incident, notify the employee, in writing...."

The only witnesses Carrier called upon to testify were the Senior Claim Agent and the General Foreman-Maintenance, neither of whom had first hand knowledge of the matter under investigation. The Senior Claim Agent testified as to the lawsuit and the General Foreman testified as to the procedures followed when advised that a switch is hard to throw. Neither party called the employee who was Claimant's Foreman on March 9 and 12, 1990, as a witness. (From the record he was furloughed as of the Hearing date).

Claimant stated that when he was injured on March 9, 1990, he immediately made an oral report to his Foreman. Carrier did not rebut Claimant's defense. Neither Claimant nor his Foreman filed a written report of the injury on the prescribed form.

Claimant testified he was familiar with the Carrier's policy with regard to reporting injuries. Claimant admitted he did not comply with Safety Rule 40.

The employee's representative attempted to mitigate Claimant's admission that he violated Safety Rule 40 by asking why he did not file the written report and Claimant responded that the usual method was to advise the Foreman and to file a report only if the injury was serious. In this Board's opinion, since Claimant had not worked since March 9, 1990, because of the injury, it is serious.

Claimant also testified that on March 12, 1990, he was unable to report to the office and file a written report.

Claimant did not file the required written report of the injury, nor did he make any effort to secure the required form. Claimant may very well have been unable to work on March 12, 1990, the first workday following the injury, but he did call in to mark off. If he could call, he could have requested the prescribed form to complete the written injury report, but he did not do so.

Of and by itself, the charge of failing to file a timely report is a serious charge that can and has resulted in discharge. See Award 5, Public Law Board No. 4859 involving the same parties as in this dispute.

Carrier's determination that Claimant was in violation of Safety Rule 40 is proper. Claimant's discharge for that reason, and only that reason, will not be disturbed by this Board.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of May 1995.