

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12894
Docket No. 12875
95-2-94-2-45

The Second Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division,
(Transportation Communications International
(Union
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Missouri Pacific Railroad Company violated Rule 31 of the September 1, 1981 Agreement when they arbitrarily, capriciously and unjustly reprimanded Carman T. L. Gean by notice dated April 30, 1993.
2. That the Missouri Pacific Railroad be advised to clear the personal record of Carman T. L. Gean by removal of the letter of reprimand and any reference to the formal investigation."

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 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 entered Carrier's service in March, 1967. At the time of the incident giving rise to this dispute, he was working as an AAR Write-up man in Carrier's car facility at DeSoto, Missouri.

Claimant sustained an on-duty injury on January 29, 1993, but did not report same until February 2, 1993.

Carrier issued Notice of Investigation to Claimant on February 5, 1993, reading:

"Please report to the office of Director-System Shop DeSoto, Missouri Conference Room, at 9:00 A.M., Tuesday, February 9, 1993, for formal investigation and hearing to determine the facts and your responsibility, if any, on charges that you allegedly failed to promptly report an on-duty injury, sustained on Friday, January 29, 1993, to the proper authority.

This indicates possible violation of Safety Rule 4004, as listed in the Safety, Radio, and General Rules for all Employees, Form 7908, revised October 1989.

This investigation and hearing will be conducted in conformance with your scheduled agreement.

You may produce witnesses as you may desire."

The Investigation was postponed at the request of the Organization until Claimant was physically and medically able to return to work. Claimant returned to work April 12, 1993, and the Investigation was rescheduled for April 23, 1993.

Claimant was found guilty of the charges and assessed a Letter of Reprimand as discipline.

The Organization appealed the discipline assessed arguing that the Investigation could not be termed "fair and impartial" when Claimant was accused of "failing to promptly report an on-duty injury." It also argued that the accident report filed on February 2, 1993, was properly filed after Claimant received medical attention on February 1, 1993, as per 39(a) of the Schedule Agreement, reading:

"Employees injured while at work will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter."

The Organization's arguments are without foundation. The Investigation was precisely called to determine if Claimant "failed to promptly report an on-duty injury, sustained on Friday, January 29, 1993, to the proper authority." Review of the Investigation transcript persuades this Board that the Investigation was fair and impartial and dealt specifically with the question of whether Claimant promptly reported his injury. The Investigation was conducted in accordance with the provisions of Rule 31, Discipline-Investigation, and Claimant was afforded all the protections and benefits of the Rule.

Contrary to arguments of the Organization, Rule 39(a) supra, does not favor a finding that Claimant either promptly filed an accident report or filed the report "as soon as practicable." The injury occurred on January 29, 1993, and obviously, was of the type not requiring immediate medical treatment as Claimant went through the weekend and did not seek to find out what was causing him some pain until February 1, 1993, when he visited his doctor for sinus medication. Since he did not require immediate medical attention, Rule 39(a) required that he proceed to make an accident report on the day of injury which under the circumstances of record would be "as soon as practicable."

Study of the Investigation transcript convinces this Board that Claimant was aware on January 29, 1993, that he had experienced an incident which could be an injury. Therefore, the provisions of Rule 4004 of the Safety, Radio and General Rules for all Employees, Form 7908, revised October 1989, reading in pertinent part:

"All cases of personal injury, while on duty, or on company property must be promptly reported to proper authority on prescribed form."

was violated by the Claimant. He failed to promptly report his injury.

Prompt reporting of on-duty personal injuries, as required by Rule 4004, is a necessity in order that Carrier may provide necessary medical care to its employees, and investigate the accident to mitigate its exposure to liability, as well as correct any hazardous condition that might exist. The Rule applies to minor as well as major injuries and is designed to protect an employee from aggravating the injury by continuing to perform service. The record before us reveals that Claimant recognized in mid-afternoon of January 29, 1993, that he had injured himself, but he continued to perform service rather than report his injury.

Form 1
Page 4

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Rules 4004 and 39(a) were violated and the Claim will be denied.

AWARD

Claim denied.

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 5th day of June 1995.