Award No. 3966
Docket No. 3688
2-WT-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement, Car Repairman, George A. Campbell was unjustly assessed with a reprimand on April 22, 1959.

2—That accordingly the Carrier be ordered to remove the reprimand from the service record of George A. Campbell.

EMPLOYES' STATEMENT OF FACTS: George A. Campbell, hereinafter referred to as the claimant, was employed as car repairman on the 8:00 A. M. to 4:00 P. M. shift at Eckington Coach Yards. On March 19, 1959 the claimant appeared for a hearing in the office of the assistant master mechanic as scheduled, being charged with failing to report alleged personal injury to himself at alleged time of occurrence, namely, February 27, 1959, which he reported on March 2, 1959. On April 22, 1959 Master Mechanic, Mr. J. A. Long, Jr. formally notified the claimant that he was hereby notified that he was reprimanded for his failure to report an alleged personal injury to himself at the alleged time of occurrence, namely, February 27, 1959 which he reported March 2, 1959.

The claimant's case has been handled in accordance with the collective controlling agreement, effective June 16, 1946, up to and including the highest designated officer of the carrier to whom such matters are subject to appeal, with the result that said officer has declined to adjust this dispute.

POSITION OF EMPLOYES: It is submitted that the reprimand assessed the claimant was unjust, arbitrary, and without precedent on the property of the carrier, and is inconsistent with rule No. 29 of the agreement, reading:

Rule No. 29—Discipline

"No employe shall be disciplined without a fair hearing by designated officer of the carrier. Suspension for major offenses pending a

delphia Transfer, violation of Safety Rules 2001 and 2002.'

Disposition: Thirty Day Suspension.

"The excuses offered for failing to report the injury suffered upon February 12, 1950, until the following morning, were (1) that it was first believed of no consequence, (2) that Carrier's medical department was closed on Sunday, the day of the injury.

We find no justification to disturb the determination made in connection with this charge. Under Rule 2001, and it would appear reasonable in this respect, employes are required to report promptly to immediate supervisor all injuries no matter how trivial. A purpose of the Rule, which goes beyond claimant's own physical condition, is to give opportunity for immediate investigation either to protect against groundless claims or to correct conditions which might endanger other employes if permitted to continue, or both. Here, the alleged defective car floor, a hazard to others, illustrates a reason for the rule which has no connection with the extent of claimant's personal injury.

Finding support for the suspension under Rule 2001, we need not consider the additional ground set forth in Charge (1).

* * * * * * * ."

The National Railroad Adjustment Board has repeatedly held that where the carrier has not acted arbitrarily or in bad faith, the judgment of the Board in discipline cases will not be substituted for that of the carrier. In view of the convincing evidence of record, the carrier's disciplinary action with respect to Car Repairman Campbell clearly was neither unjust nor was it arbitrary, capricious or in abuse of the carrier's discretion in disciplinary matters. Therefore, the carrier's action should not be set aside. A denial award is requested.

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 employe 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.

After a hearing a reprimand was placed upon Claimant's record on the ground that he had violated Article A of Carrier's Safety Rules, which provides that "All injuries no matter how trivial must be reported promptly and medical attention obtained."

The facts as shown by the record are that at about 3:00 P. M., an hour before the end of Claimant's shift on Friday, February 27, 1959, some foreign substance got into one of his eyes, but caused no pain and seemed to have been removed by natural processes; but that when he awoke on Saturday morning, February 28, his assigned rest day, something was scratching his eye, so he went to the nurse in the first aid room at the Station; finding that she was unable to remove it, she sent him to the medical examiner, who did

so. There was no further trouble; Claimant lost no time and reported the incident to his foreman on the afternoon of Monday, March 2, his next work day.

While the discipline imposed was relatively slight, future events could perhaps make it detrimental to Claimant's interests. Consequently its propriety should be seriously examined.

Carrier's intensive safety program is highly laudable, but the question is whether under the facts of this case the reprimand was merited.

Safety Rule A properly requires prompt report and medical service for all injuries, however trivial. "Injury" is defined in Webster's New Collegiate Dictionary as "damage or hurt done or suffered." Instances of foreign matter in eyes are very common, but relatively few of them come within the definition of injury by causing "damage or hurt." Most of them never occasion any pain and this incident was promptly reported and medical attention obtained when pain developed. Claimant's testimony at the hearing was not argumentative nor captious, but entirely factual. It showed no intention to disregard either Safety Rule A or his own welfare.

The same is true of his attitude toward Rule 37, which requires an accident report as soon as practicable but does not specify how or to whom. He stated: "The rules are not specific and I figured that reporting it to the nurse was just as good as anybody else." There is no showing of an established practice concerning such reports. While the report to his foreman could undoubtedly have been made earlier on Monday, and there may have been someone other than the nurse, the doctor and the foreman to whom he could have reported the incident on Saturday or Sunday, we cannot conclude from the record that Claimant violated Safety Rule A.

If it is desired that every instance of dust or foreign matter in an eye shall be reported whether or not injury results, and that reports be made to someone other than nurses and doctors, the rules or safety rules should be made specific.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1962.