

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 76, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Firemen & Oilers)
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. Under the current controlling Agreement, Mr. Ray Rosalez, laborer, Deer Lodge, Montana, was unfairly dealt with when dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, effective December 22, 1977.
2. That, accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, be ordered to reinstate Mr. Ray Rosalez to service with seniority rights unimpaired, payment for all time lost, credit for fringe benefits, and remove the record of charge from his personal file.

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 waived right of appearance at hearing thereon.

Claimant was dismissed for violation of Safety Rules and failure to notify his foreman immediately of an injury occurring on Wednesday, November 9, 1977, in that he allegedly falsified Form 171, Report of Injuries to Persons, filed November 13, 1977.

As gleaned from the record, Claimant was directed by his foreman on November 9 to clean the drop pit. Claimant testified that while doing the work he developed back trouble; "my back was out between my shoulders".

On Sunday, November 13, Claimant or his wife called three fellow employees requesting them to take Claimant's shift that day, giving the reason for such request that Claimant hurt his back while cleaning the drop pit the previous Wednesday. None of these employees complied with the request.

On November 13, Claimant filed Form 171 alleging that he hurt his back while setting a handbrake. At the investigation, Claimant's foreman disputed Claimant's explanation of the cause of his injury.

Claimant testified that he was familiar with Carrier's Safety Rule Book and with Rule No. 1 which provides, in part:

"1. A prompt report must be made to the immediate supervisor of any injury. Form 171, Report of Injuries to Persons, must be filled out immediately, if possible..."

Claimant acknowledged that he did not comply with the requirements of Rule 1. Although he asserted that his back did not start affecting him until the next morning, Thursday, he did not report his injury to his foreman. In direct testimony, he stated that his back slipped on November 9 while cleaning the pit.

Carrier's position is that Claimant falsified Form 171 by alleging an injury on November 13 when in fact he incurred his back injury on November 9 while working in the drop pit -- a fact borne out by his request (and reason for the request) to three other employees to fill in on his assignment on Sunday, November 13.

We find that Claimant did not report his injury on November 9 to his foreman as required nor did he submit the Form 171 in connection with the injury incurred on November 9. Instead, he filed Form 171 on November 13, for an injury allegedly incurred that day, contrary to his testimony that he had injured his back on November 9.

Claimant violated Safety Rule No. 1 by failing to report his injury of November 9. The evidence is persuasive that he did incur an injury on that date. We can therefore reasonably conclude that he misstated the facts submitted on Form 171 which he filed on November 13.

Although Claimant did not comply with the rule requiring timely submission of the Injury Form and he misstated the date of the injury, we believe that these infractions were not such as to justify the penalty of dismissal. Although we believe that Carrier was justified in disciplining Claimant, in our view dismissal was excessive and disproportionate for the offense involved. Claimant was terminated on December 22, 1977. He has been held out of service for some two and one-half years, which we deem a sufficiently severe penalty. The period of time since his dismissal should serve the purpose of impressing on Claimant the necessity to comply with the rules and to report truthfully, accurately, and timely on Carrier's prescribed reporting forms dealing with injuries and accidents on the job. We are accordingly converting Claimant's dismissal into a suspension, with no back pay.

Claimant is to be restored to service with all rights unimpaired but without back pay.

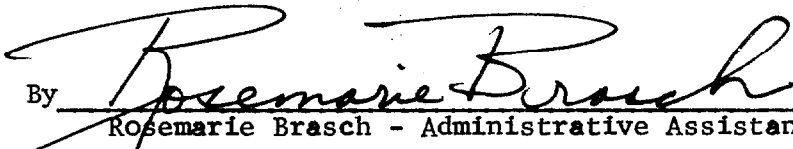
A W A R D

Claim sustained to the extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of August, 1980.