Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8475
SECOND DIVISION Docket No. 8369
2-C&NW-BK-'80

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Welder Helper J. G. Van Grunsven was unjustly dealt with when on date of September 15, 1978, he was assessed a thirty (30) day suspension from service of the Company.

2. That, accordingly, the Carrier be ordered to make Claimant whole for all wages and benefits lost during the time held out of service plus 6% annual interest, and that such discipline be removed from the 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 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.

On August 28, 1978, Claimant, a Track Welder Helper, was assigned to assist in the welding of joints of mismatched rails at Carrier's Lake Shore Division in Green Bay, Wisconsin. At approximately 3:00 P.M., while so engaged, Claimant sustained an injury which amounted to a cut of 3/4" in length on the outer side of Claimant's right foot. Following this injury, Claimant, for reasons which will be discussed later, failed to notify anyone of the incident at that time, nor did he file a written report of his injury on that day.

The following day, August 29, Claimant telephoned his Supervisor and informed him that he would be absent from work that day. According to Claimant, although the reason for said absence was because his foot "hurt quite a bit", at no time in this conversation did he (Claimant) divulge the nature of his malady, nor did he mention that he had been injured the day before. Additionally, the record also shows that on the day of his absence, Claimant did not consult with a doctor regarding his condition, but instead he tended to the matter on his own.

On August 30, 1978, two days after the alleged injury, Claimant reported for work at approximately 7:00 A.M., and at that time, for the first time, he reported the incident to his Supervisor. In his initial report, Claimant alleged that the injury resulted when he accidentally dropped a small piece of rail on his foot. In a later report, however, Claimant recanted this version of the incident and admitted that he had accidentally "kicked a tie". According to Claimant, the disparity between the two reports was because he initially did not want to admit his own "stupidity".

As a result of this incident, Claimant was suspended from service for a period of thirty (30) days effective August 30, 1978, because of his "... responsibility in connection with a personal injury that occurred on Monday, August 28, 1978 and reported on Wednesday, August 30, 1978, as per Basic Rule 1 in the General Regulations and Safety Rules, effective June 1, 1967".

Claimant's Organization contends that Carrier's assessment of the thirty (30) day suspension was an arbitrary, unjust and capricious action.

In support of its contention, Organization argues that the statement of charges which was contained in Carrier's Notice of Investigation was neither "clear, specific or precise" as required by the parties' controlling Agreement. Regarding this contention, Organization contends that the stated charge which was to be investigated at the September 9, 1978 hearing was that of Claimant's alleged responsibility in connection with the personal injury which occurred on August 28, 1978. However, according to Organization, said hearing went beyond the initial charge and focused instead upon Claimant's alleged failure to report said injury in a timely manner. Organization maintains that such an expansion of Carrier's original charge deprived Claimant of his right to a fair and impartial hearing. In this regard, Organization contends that had Claimant known that the basis for the hearing was his alleged failure to report the injury rather than the injury itself, then Claimant would have produced different evidence and witnesses at the hearing in support of his respective position.

In addition to the aforementioned argument, Organization further contends that Carrier in its investigation failed to produce any evidence which would support a finding that Claimant's injury resulted from a violation of any of Carrier's safety rules. Thus, Organization summarizes that Claimant is innocent of the charges which have been brought against him, and his suspension, therefore was improper.

Stated simply, Carrier's basic position in this instant dispute is predicated upon the following four contentions: (1) Claimant's injury was caused by his own carelessness and stupidity; (2) initially, Claimant gave a false report regarding the cause of his injury; (3) Claimant failed to promptly report his injury thereby violating Rule No. 1 of Carrier's General Regulations and Safety Rules; and (4) Carrier's Notice of Investigation clearly sets forth the exact nature and extent of the charges which had been leveled against Claimant.

After a careful analysis of the complete record which has been presented, there can be no doubt that Carrier's position in this dispute is correct, and must, therefore, be upheld.

This Board, as well as various others on this and other Divisions, has consistently held that it is clearly within a Carrier's managerial prerogative to promulgate and administer reasonable rules which require the prompt reporting of employee injuries (Second Division Award Nos. 5997, 8261 and 8272). The rationale for this recognition was articulated most cogently in Third Division Award No. 19298 wherein Referee Cole summarized that:

> "(P)rompt reporting of injuries, whether real, suspected, or imaginary is extremely important to the employer because:
>
> 1. The employer is entitled to mitigate his damages by having the employee treated promptly, so that an earlier return to work is possible and a valued employee may return to his job.
>
> 2. The Carrier has a duty to its stockholders and its employees to correct any condition that causes injuries if such a condition may be corrected."

Despite Organization's contentions to the contrary, it is clear that Claimant was injured; said injury was caused by Claimant's own carelessness and/or "stupidity"; and, Claimant failed to report said injury to his Supervisor until approximately two days after the incident had occurred. Thus, under such circumstances, and in accordance with Carrier's rule, unless otherwise procedurally defective, Carrier may take disciplinary action against an employee who fails to promptly report an injury which occurs to his/her person.

Given the above analysis, the only issue of significance which remains is the Organization's contention that the statement of charges contained in the Carrier's Notice of Investigation was "... too vague to be considered as proper..." and that the investigation hearing itself went beyond the specific charge which had been cited initially. In this regard, this Board is unable to find even the least bit of evidence which would support this particular claim. A reading of the contested language as drafted by Carrier clearly indicates that the purpose of the September 5, 1978 investigation was to ascertain Claimant's "... responsibility in connection with a personal injury that occurred on Monday, August 28, 1978 and reported on Wednesday, August 30, 1978 ..." (Emphasis added). Unquestionably, the utilization of the word "and" in the statement of charges imparts that the investigation hearing was to focus upon two distinct aspects of the incident -- one, the occurrence of the injury itself; and two, the reporting or lack of reporting of same. While it is true that the disputed statement -- or any other written statement for that matter -- could have been written in a more clear, direct and succinct manner so as to express the Carrier's intended message, the fact remains that the particular words and phraseology which were used by Carrier in this context were both proper and unambiguous.

In light of the foregoing, the discipline assessed by Carrier was neither arbitrary, unjust or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of October, 1980.