

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10041
Docket No. 10294
2-SOO-CM-'84

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Soo Line Railroad Co. violated Rules 32 and 40 of the Shops Craft Agreement, when they unjustly suspended Carman Donald Smith, from service, five (5) work days July 20 thru July 24, 1982, due to investigation held on July 1, 1982, "to develope (sic) the facts and place responsibility, if any regarding your failure to report personal injury to yourself at approximately 5:00 A.M. on June 22, 1982. Accident report form 172 not filled out by you until June 24, 1982 at 8:20 A.M. forty eight hours late."
2. That accordingly the Soo Line Railroad Co. be ordered to compensate Carman Donald Smith 5 work days or 40 hours at straight time Carmens rate of pay and have investigation removed from his record, due to Soo Line Railroad Co. failure to show Burden of Proof to their charge and violation of Rule 32 and 40.

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 employes 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 a car inspector at Carrier's Shops Yard, Fond du Lac, Wisconsin. On June 22, 1982 Claimant bumped his back against the side sill of a car while in performance of his duties. As the result of a formal investigation, Claimant was found to have violated general safety rule (h) and was assessed a five-day suspension.

The Organization in its argument and submission to this Board maintains that Claimant was not advised of a precise charge, that he failed to receive a fair and impartial hearing, and that the Carrier failed to meet its burden of proof as to the charges. The Carrier's charging letter sufficiently informed Claimant that he was being investigated for a Rule (h) violation of failing to report a personal injury. The appropriate date, time and omission by Claimant were in the Board's view, sufficiently set forth to enable Claimant adequate notice from which he could prepare his defense to the charge. Review of the entire record by this Board reveals that Claimant had a fair and impartial hearing with opportunity to present evidence and witnesses, and to engage in cross-examination.

However, this Board is compelled upon examination of the entire record to sustain the Organization's contention that Carrier has failed to meet its burden of proof. Safety Rule (h) states that "every injury must be immediately reported to superior officer." The record reveals that while Claimant did not complete a written report until 48 hours after the incident but before he sought medical attention, Claimant testified that he had told the lead carman he had bumped his back on the day of the incident. While Carrier vigorously argues that Claimant should have informed his foreman of the incident rather than the lead carman, Carrier's own hearing officer acknowledged that the "superior officer would be his leadman or anybody that is in charge." The Organization's local chairman testified to the leadman's acknowledgement that Claimant reported that the latter bumped his back. Carrier's car foreman admitted to not being at work on the day of the incident, and his testimony upon both direct and cross-examination revealed that the leadman did not know or remember whether Claimant had reported the incident to him.

The working agreement between the parties provides in Rule 40, paragraph 1, at follows:

"1. 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. Proper medical attention will be given at the earliest possible moment, and, when able, employees shall be permitted to return to work without signing a release pending final settlement of the case."

Both the Organization's and Carrier's reliance upon Rule 40 on this appeal is inapposite. There is simply no showing that the filing of Claimant's written accident report 48 hours after the incident and after he had verbally notified his superior officer of the occurrence is a violation of Safety Rule (h) when reasonably construed with Rule 40. The Board recognizes that safety is of utmost importance to all Carriers, and is of equal importance to the employees own safety and protection. However, it is the duty of this Board to apply rules and contractual provisions to the particular facts and circumstances of each case. The burden of proof rests upon the employer to establish that by substantial, credible evidence the employee committed the offense as charged. The Carrier has failed to meet that burden here.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1984.