

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
(
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman D. A. Davis, Atlanta, Georgia, was unjustly suspended from service from July 8, 1982 through August 6, 1982.
2. That accordingly, the Carrier be ordered to pay Carman D. A. Davis for all time lost while suspended from service.

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 employees 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.

While dismounting a car on May 11, 1982, Claimant slipped and strained his left knee. Claimant did not report his injury or file a proper accident report that day. The following day, May 12, 1982, Claimant called in at 6:00 a.m. and marked off on account of pain in his back. Later that same day Claimant again called the Carrier to report that he would be off duty per his doctor's instructions until further notice due to back pain. At no time on May 12, 1982 did Claimant make an oral report, or an accident report, of the injury to his knee on May 11, 1982.

On May 13, 1982 the Claimant appeared at the office of the master mechanic. At that time Claimant presented the following note to the master mechanic, which was placed in his file:

"May 12, 1982

TO WHOM IT MAY CONCERN:

Mr. Donald A. Davis requires rest at home to recover from severe Back Pain and Injured Left Knee. He will be off the job until at least Tuesday May 18, 1982.

Thank you.

/s/
Nison H. Shleifer M.D."

Despite the presence of the two general foreman in the office when Claimant appeared, he did not request that an accident report be prepared. On May 19, 1982 the Claimant spoke with the general foreman before 7:00 a.m. to say that he would be off until the 24th of May because of pain in his back and neck. Not until approximately 7:00 on the evening of May 19, 1982 did Claimant provide the information necessary for preparation of an accident report.

The Carrier argues that the Claimant was properly charged with a violation of Rule 59 - Employees Injured at Work which reads in pertinent part:

"Employees injured while at work will not be required to make accident reports before given medical attention. Medical attention will be given as quickly as possible. Employees will make accident reports as early as practicable, and will not be required to sign a release pending settlement of the case." (Emphasis supplied).

The Carrier held a preliminary investigation on June 16, 1982 in accordance with Rule 34(b). At the preliminary investigation, Claimant and his duly accredited representative were present. The Carrier's officer did not assess discipline at the informal investigation. Instead, he orally notified Claimant that a formal investigation would be scheduled on the charge of failure to comply with Rule 59. The Carrier properly complied with Rule 34(e) which states:

"In lieu of the procedures outlined in Sections (b), (c) and (d) above, if the Carrier determines the need for holding a formal investigation prior to the assessment of disciplinary action, any employee involved shall be furnished a letter setting out the subject matter and any charges against him. No charge shall be made involving any matter of which the carrier officers involved have had knowledge for more than thirty (30) days. Such letter shall set a time, date and place for formal investigation which shall be conducted by the employing officer, or his representative, as otherwise provided in Section (d) above.

The Organization's position that the charging letter is not the same as the oral charge at the end of the informal investigation is unsupported by the facts. The letter in a succinct fashion sets forth the clear prohibition of Rule 59, i.e., failure to timely report in a proper fashion a personal injury accident.

The admission of Carrier's witnesses' testimony to the effect that Claimant "marked off" on prior occasions is neither relevant to the charge of a Rule 59 violation, or harmful and prejudicial to Claimant. Claimant did not attempt to file a timely accident report in accord with the requirements of Rule 59. The physician's note of May 12, 1982 which Claimant brought in person to the Carrier's offices is evidence that as of that date the Claimant knew he had injured his knee, but never asked to prepare an accident report. This is distinguishable from those situations where an accident is reported immediately upon discovery that an employee has been injured. Public Law Board No. 2512, Award No. 56. Claimant failed to even orally advise his foreman that his knee bothered him when he called the Carrier the day after the alleged injury occurred. The Claimant did not report the accident when he was physically present on the property two (2) days after the injury. Compare, Public Law Board No. 2512, Award No. 8.

As testified to by the Carrier's witnesses, and as this Board concludes, not every bump, bruise or momentary pain is an injury which must be reported under Rule 59. However, Claimant must bear responsibility for failure to report an injury for which he received, and would continue to receive, medical attention despite ample opportunity to do so. The Board finds on the basis of the record that the Carrier's disciplinary action was neither arbitrary or unreasonable, and therefore, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinios, this 22nd day of May, 1985.