Award No. 11050

Docket No. DC-12830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Local 516 on the property of the Chicago & North Western Railway Company, for and on behalf of Waiter James G. Kirk, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since November 20, 1959, account of Carrier dismissing claimant from service in violation of the agreement.

OPINION OF BOARD: Claimant was discharged on September 20, 1960, on the following charge:

> "(a) Your failure to comply with Rule 31, of the Book of Rules and Instructions, Dining Car Employees, effective August 1, 1945, by not immediately notifying the Manager of the Dining Car Department of an injury you sustained at California Avenue Yard, Chicago, Illinois on Friday, November 20, 1959.
>
> (b) Your failure to report immediately to the Company doctor for examination after sustaining the above mentioned injury.

At the Investigation conducted on September 13, 1960, Claimant was the only witness. He testified that he felt a catch in his back when he picked up a case of Coke which he was loading in the dining car. He reported this to his immediate superior, Russell Mayo at that time. This was all on Friday, November 20, 1959. He did not immediately go to the doctor, nor was he directed to do so by his immediate supervisor. Instead, he completed his assignment on the train from Chicago to Minneapolis. His pain became more acute and he remained in bed on Saturday, November 21, 1959. The following day (Sunday, November 22) he had a friend drive him to the Minneapolis Yard to secure Form 148 and file a report of his injury. There was no one available to give him the form. On Monday, September 23, 1959, he procured a copy of Form 148 and filed it. He was advised to call the Superintendent, in Chicago, which he did, and also saw the Carrier's doctor at the instruction of the Superintendent. The evidence is not challenged or refuted.

Carrier contends that the Claimant did not comply with Rules 30 and 31. The Organization cites Rule 32 in support of its position. These Rules read:

"Rule 30:

"Whenever passengers or employes are injured, see that everything is done to care for them properly, no matter how slight the wound or eye injury, to prevent infection; applying the 'first aid' package treatment when available, calling the Company's surgeon to treat them or if prudent, move to the nearest place at which the Company has a surgeon and leave them with such surgeon for care and treatment. If the injury be serious and a company surgeon is not available, call the nearest competent surgeon obtainable to attend until the company's surgeon arrives and takes charge."

"Rule 31:

"A report of all accidents in proper form must be sent immediately to the Superintendent, and as soon as possible a full and detailed report made on Form #148 and forwarded to the Superintendent. If the injured person is an employe, he should also make and sign a statement of facts in relation to the accident in his own handwriting on the same form; should he be unable to write, the statement should be written at his dictation and after being read over to him, he should sign it by making his mark, the person writing and reading the statement sign same as witness."

"Rule 32:

"When physically able to do so, employes sustaining an injury of any kind while on duty will report the injury and cause to his immediate superior before leaving the company's premises."

These Rules are not altogether clear and unambiguous. There is even some conflict. Rule 32 says that employes sustaining injury shall report "when physically able to do so." This is not inconsistent with the provisions of Rules 30 and 31. All three need to be considered in determining whether Claimant reported his injury as required.

The fact is that after Claimant reported a catch in his back to his immediate supervisor, he continued his work and completed his assignment to Minneapolis. There is no evidence that Claimant deliberately refused or unnecessarily delayed making his report to the Dining Car Manager on Form 148.

In view of all the evidence Claimant complied with Rules 30, 31 and 32 and he was unjustly discharged.

The record shows that the Organization requested a postponement of the Investigation originally scheduled for December 4, 1959. The Organization was not ready to complete this Investigation until September 13, 1960. The Claimant is not entitled to compensation for that period. Carrier also contends that Claimant could not have held his position since July 1960 because there had been fewer dining cars in operation which required fewer employes, and Claimant's seniority does not entitle him to a position. This is a matter of record which the parties will have to determine.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claimant should be restored to service with all rights unimpaired and that he be compensated for all time lost when he was available for work and there was work for him to which he was entitled in his seniority order.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.