



Award No. 16023
Docket No. MS-16270

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

CLARENCE CAYLER

MINNESOTA TRANSFER RAILWAY COMPANY

STATEMENT OF CLAIM: This is an appeal of a decision rendered by Mr. Carl Lamphere, Superintendent Minnesota Railway Transfer Company, dated December 22, 1964, wherein he advised me that I was suspended from service for a period of ten working days, commencing on December 25, 1964 including January 5, 1965. This decision was based on an investigation held at 4:00 P. M., December 11, 1964, in which I was charged with an alleged violation of General Instruction No. 11, first paragraph of the Minnesota Railway Transfer Company Operating Rules, Safety Rules, and General Instructions, for failure to promptly submit a report of an injury on October 16, 1964. This appeal is based on violations on the part of the Company:

1. An invalid and illegal charge against Defendant
2. Illegal jurisdiction to hold an investigation
3. Illegal investigation procedures
4. Violation of Company and Union Agreements on Personal Injury Reports
5. Violation of Holiday Agreement

Defendant requests reimbursement for wages lost during this ten day period of suspension including the Christmas and New Year's Holiday and overtime worked during this ten day period, and for being illegally suspended from service.

OPINION OF BOARD: Claimant suffered an injury at work on October 16, 1964; he lost no time as a result of the injury. He filed the personal injury report of the accident, which report is required by General Instruction No. 11 of Carrier's Operating and Safety Rules, on November 25, 1964. That rule requires that such reports be "promptly reported in triplicate to the proper office." On December 7, 1964, notice was sent to the Claimant that an investigation would be held on December 11, 1964:

" . . . at which time you will answer to the charge of violation of General Instruction No. 11. . . .

This is in reference to your failure to promptly submit a report of an alleged injury on October 16, 1964. . . ."

The hearing was held on December 11th; shortly after the outset of the hearing, Claimant objected that the hearing was improperly held because under the terms of the Union Agreement "an investigation must be held on an alleged violation within 7 days . . ." The hearing continued with Claimant participating under protest on the basis of the foregoing objection; at the conclusion of the hearing Claimant replied to the query ". . . do you think this was a fair and impartial investigation?", "Everything except what I protested." On December 22nd, 1964, Claimant was notified by the Carrier's Superintendent who had conducted the investigation that he had concluded that the charges had been confirmed and that Claimant was suspended from service from December 25, 1964 to January 5, 1965.

On January 6, 1965, Employees' General Chairman Curran appealed, arguing: 1. that the Carrier's rule was ambiguous; 2. that, under the circumstances, Claimant made out the report as promptly as possible; and 3. that the decision of the Superintendent was arbitrary, capricious and discriminatory. On March 9, 1965, in a letter appealing denial of the January 6th claim, the General Chairman claimed only that: 1. that Claimant had not been proved to have violated Company rules or policy; and 2. that the decision of the Superintendent was capricious. After final denial of the claim as filed by the Employees, no further action was taken by the Employees; but, in January, 1966, Claimant timely filed notice of his intention to submit the dispute to us; he wrote that his appeal was based on:

- "1. an invalid and illegal charge against Defendant
2. illegal jurisdiction to hold an investigation
3. illegal investigation procedures
4. violation of Company and Union Agreements on Personal Injury Reports
5. violation of Holiday Agreement"

There is no evidence in the record to support the claim: (1) There is nothing in the Agreement which prevents Carrier from making and enforcing a safety and operating rule such as its Rule 11, so long as the specific instance of enforcement does not violate the Agreement. (2) As Claimant says in his Submission, ". . . the agreement between the Minnesota Transfer Railway Company and the Brotherhood of Railway Clerks' Organization clearly states that the investigation shall be held within seven days of the date when charged with an offense."; the Claimant was charged with the offense in a letter dated December 7 and the investigation was held on December 11, well within the seven day time limit. (3) There is nothing in the record of the investigation indicating that the procedure was illegal or in any way improper; and no other evidence is in the record which supports this complaint. (4) Claimant did not submit evidence which shows any violation of the Agreement on Personal Injury Reports. (5) No violation of the Holiday Agreement was proved in the record.

Even without a tight definition of the word "promptly" as used in Rule 11, the transcript of the investigation contains evidence adequate for

a reasonable conclusion that Claimant did not promptly report his October 16 injury and that his excuses for his delay in reporting were neither adequate basis to call the time he did report "prompt", nor adequate justification to excuse him from the requirement of Rule 11. Under the circumstances, we cannot find that either Carrier's conclusions as to his having violated the rule or the penalty imposed by Carrier was arbitrary, capricious, discriminatory or unreasonable.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December 1967.