

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23006
Docket Number MW-23104

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of **Trackman C. E. Randolph** was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File B-L819).

(2) **Trackman C. E. Randolph** shall be afforded the remedy prescribed in Article 11, **Rule 91(6)**."

OPINION OF BOARD: Claimant had been employed by Carrier as a **trackman** for about five months. He was dismissed from the service on August 14, 1978, for failure to report a personal injury which he allegedly sustained on August 3, 1978, and for failure to return to work after being released by medical authority. At the request of the Organization, a formal investigation was conducted on August 28, 1978, following which claimant's dismissal was affirmed.

The record shows that claimant allegedly sustained a personal injury about 11:30 a.m., August 3, 1978, while assisting other **employees** in moving a rail. He continued working that day but did not report the injury to his foreman. Carrier's Rule 713 reads:

"If physically able, an **employee** injured on duty **must** report the injury to his foreman or other supervisory officer before Leaving company premises."

The claimant reported the injury to the foreman on August 4, 1978. He was taken to a hospital. The doctor at the hospital diagnosed claimant's injury as a pulled muscle, and advised claimant to stay off work the remainder of the day, Friday, August 4, not to Lift anything heavy, and to report to Company Doctor Young on Monday, August 7, 1978. Claimant was examined by Dr. Young on August 7, 1978, and again on August 8, 1978, who rendered report dated August 11, 1978:

"I first examined this man on 8/7/78 for painful Left sacro-? ? ? ? . He was strapped up for relief. I next saw him on 8/8/78 at which time he stated he was better. At that time he stated back was still painful. I could find no pathology."

~~There~~ is substantial evidence in the investigation that claimant declined to return to work, after the Company Doctor advised the ~~Foreman~~ and the ~~Roadmaster~~ on August 9, that he was able to do so. The ~~foreman~~ contacted the claimant and inquired if he ~~would~~ return to work if the foreman assigned him light duty, but claimant refused. Claimant later refused to turn over to the ~~foreman~~ the release given him by Dr. Young.

Based upon the entire record, and considering claimant's short service, the Board does not find the Carrier's action to be arbitrary, capricious or ~~in~~ bad faith.

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 ~~respec-~~
~~tively~~ 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 the Agreement was not violated.

A W A R D

~~Claim~~denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.