

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24014
Docket Number MW-23786

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(The Denver and Rio Grande Western Railroad Company)

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

(1) The dismissal of **Trackman G. A. Esquibel** for his 'responsibility, if any, **in connection** with Section **Laborer G. A. Esquibel's** alleged personal injury' was without just and sufficient **cause, capricious, on the basis** of unproven and disproven charges **and** in violation of the Agreement (System File D-33-79/MW-25-70).

(2) **Trackman G. A. Esquibel** shall be reinstated with seniority, vacation and **all** other rights unimpaired **and** be compensated for all wage loss **suffered."**

OPINION OF BOARD: **Claimant G. A. Esquibel**, a **Trackman** with about three months service, was served with a notice of investigation "to develop facts **and place** responsibility, if any, in connection with "his alleged **personal injury sustained** near Littleton, Colorado, at approximately **3:15 PM, Wednesday, May 16, 1979.**" The investigation was held on May **31, 1979**, and Claimant was dismissed from the **service** by a letter to him dated **June 8, 1979** from the **Carrier's Superintendent.**

A review of the record before this Board establishes that the notice of investigation **provided** sufficient **information** to **permit** Claimant to properly prepare a defense. The overriding need for prompt and full reporting to supervision of **any injury** sustained by an employee while on the job is **fundamental** in the **Railroad industry**, and Claimant was aware of such requirements. Yet, the record further establishes that he did not report his claimed **injury** to the Foreman on May **16, 1979**, that he worked almost a full day on the 17th before making his **first** report, and that when he did begin to report it was in stages of ever increasing severity spread over a number of days; **from an** arm injury to subsequently include leg and ankle involvement. There was substantial **evidence** to sustain Carrier's decision to discipline Claimant for this serious infraction, and the penalty of termination was reasonable.

The last paragraph of Rule 28(a) provides "A decision **will** be rendered within ten (10) **calendar** days from the date of the investigation. If not rendered within the ten (10) day period the employee, if held out of service, will be paid a **minimum** day's pay for each day thereafter **until** a decision is rendered." It is generally accepted that the time limit for

rendering a decision also encompasses when notice of that decision is to be sent to a Claimant. Here the decision of the **Carrier** was timely rendered (June 8th) but the record is unclear as to what exactly ensued, other than that the **cancellation stamp** on the envelope which **ultimately** reached the Claimant was dated June 21, 1979. However, as the Claimant was not held out of service but apparently did not report **of his own** volition, the last sentence of the last paragraph of Rule 28(a) does not apply.

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 the **Agreement** was not violated.

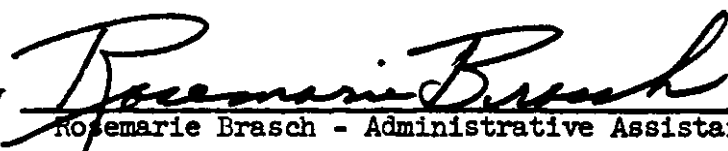
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting **Executive** Secretary
National **Railroad** Adjustment Board

By


Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 20th day of October 1982.