

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24565

Docket Number MW-24734

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Colorado and Southern Railway **Company**

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

(1) The dismissal of **Trackman** J. W. **Hathoot** for alleged 'failure to submit factual report of injury sustained while working as **trackman** on Gang No. 023-201 between Walsenburg and Trinidad' on May 6, 1981 was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File C-16-81/NW-437/.

(2) The claimant shall be reinstated with seniority and all other rights unimpaired for all wage loss suffered, including overtime pay."

OPINION OF BOARD: This dispute concerns the alleged failure of claimant to file an injury report promptly as required by Company rules. Carrier's letter of June 18, 1981 to claimant states basis on which he was dismissed from service:

**** for violation of Rules 2, 4, and 662 of the Burlington Northern Safety Rules for your failure to submit factual report of injury sustained while working as **trackman** on Gang No. 023-201 between Walsenburg and Trinidad at approximately 4:00 PM, May 6, 1981, as disclosed by investigation accorded you on May 19, 1981."

Claimant was a regularly assigned section laborer with seniority date of August 10, 1978, headquartered at Trinidad, Colorado on May 6, 1981, the date of the incident.

Claimant had sustained an off duty injury to his left shoulder while playing soft ball on May 1, 1981, following which he was x-rayed and treated for strain and contusions plus medication and heat treatments. He was released for return to work effective May 5, 1981, for light duty until May 11, 1981. He returned to work on May 5 and was assigned to light duty. The incident out of which claim arose occurred at approximately 4:00 PM on the following day, Wednesday, May 6. Claimant, along with other men in the gang were assisting in pulling wire while their work truck, driven by the foreman moved through a gate. In the movement, the truck backed up and caused claimant's glove to be caught in the wire. The truck was stopped quickly when **employees** yelled. Claimant was asked by his foreman if he was all right. Claimant answered he was not cut by the wire and that he would be all right. On their way back to headquarters foreman again asked the question. Claimant responded to the effect he was okay. Foreman did not ask claimant for an injury report upon arrival at headquarters since at that time there was no evidence claimant had been hurt in the incident.

On May 7, the following day, claimant did not report for work and his foreman telephoned him that evening to ascertain the reason. Claimant replied he had hurt his arm in a different place in the incident with the wire gate. In the conversation claimant said he would **not** report for work the following day as he had to go to the doctor. In response, the foreman directed claimant to go into the office and file an injury report. Claimant answered that he would do so. No action was taken by claimant toward filing an injury report until May 8 when he **sent his wife** to the office to pick up the form. Carrier representative in the office declined to furnish the form and directed her to have claimant come in person as Roadmaster Thurston wished to talk to him. Nothing further was heard from claimant until May 14, 1981 when he filed the required injury report. Although his claim of injury was to the left arm and shoulder there **is** some indication in the evidence the incident with the wire gate involved his right glove and that his left arm, being injured in the off-duty accident of May 1, would not have been used to pull the wire in the incident of May 16.

The Carrier Operating Safety Rules bearing on this case are as follows:

RULE 2

"2. An employee having any knowledge or information concerning an accident or injury before his tour of duty ends (or as soon thereafter as possible), must complete Form 12504, Report of Personal Injury, in triplicate, supplying the information required. All copies are to be sent to the superintendent."

RULE 4

"4. Injury of any kind, however minor, must be promptly reported."

RULE 662

"662. **Employees** who withhold information or fail to give factual report of any irregularity, accident, or violation of rules will not be retained in the service."

The Carrier requirement for prompt reports on injuries is well established and generally accepted as prudent operating procedure. Thus, Award 19298 of the Third Division provides:

"Prompt reporting of injuries is necessary and extremely important. It is set forth in the rules and it is a reasonable requirement.

"Prompt reporting of injuries, whether real, suspected or imaginary is extremely important to the employer because:

1. The employer is entitled to mitigate his damages by having the employee treated promptly, so that an earlier return to work is possible and a **valued** experienced employee may return to his job.

2. The carrier has a duty to its stockholders and its employees to correct any condition that causes injuries if such a condition may be corrected."

Testimony was given by claimant during the investigation hearing to support contention he was not able to go to office and make out injury report promptly after May 8 when his wife was informed he would be required to do so. The medication he described, Motrin, a pain suppressant, does not appear to have been of a kind that would have immobilized him to the point of preventing him going to the office as directed. If he sent his wife to the office it appears reasonable that she could have taken him when advised it would be necessary for him to go to the office in person. As events developed claimant was under doctor's care from May 7, 1981 until released on September 28, 1981. He was offered reinstatement by the Carrier on February 10, 1982 with seniority rights unimpaired. He declined the offer.

The Organization cites Rule 32 of the Labor Agreement as a basis for excusing the claimant from filing an injury report. The rule provides:

"RULE 32 - INJURIES-SICKNESS

An employe injured **or** becoming ill on duty or in the course of his employment shall be given prompt medical attention. In the event such injured or ill employe is working **or** stationed at a point removed from where medical attention can be obtained, the Company will provide means of transportation to secure treatment.

An employe injured will not be required to render any reports or attend investigations until he has been provided with and released from medical treatment.' (Emphasis added)

The rule as quoted above would appear to apply in situations where medical attention is required promptly after an injury. In this case, however, claimant stated he was all right at the time of the accident also while riding back to headquarters in the Company truck. Thus, there was no reason at that time for him to be required to make an injury report. At that time he claimed no injury. It was not until the next day he claimed injury and it was at this time he was directed to file the required report. That he failed to do so **until** May 14, 1981 without adequate cause is the basis for the disciplinary action which does not appear unreasonable in the circumstances. The record does not support a claim that he was physically unable to do so promptly, as directed.

Particular concern by the carrier in requiring prompt reports of accidents resulting in liability claims lodged by employes injured on the job is evidenced by Award No. 22936, involving the same parties on this property. In that case the Division found:

"* with this in mind, the Board can fully understand Carrier's desire to impose severe penalty on employes who do not comply with safety rules."**

Upon consideration of the entire record, the Board finds Claimant should be offered one last chance, therefore, Claimant to be reinstated with seniority and other rights unimpaired, but claim for wages lost is denied.

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 discipline was excessive

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1983.

