

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25157
Docket Number **MW-25274**

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail **Corproation**
(Former Penn Central Transportation Company)

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

(1) The dismissal of Carpenter G. L. Wilson **for** alleged violation of 'Rule 3000' was without just and sufficient cause (System Docket 677).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant, with about four years of service, was employed as a carpenter, working under the supervision of Carpenter **Foreman J. L. Lafferty**. On November 6, 1980, Claimant was instructed to appear for a trial on November 18, 1980, on the charge:

"Violation of Safety Rule 3000: 'Injured **employee** must immediately:

(a) Inform immediate supervisor, even though extent of injury appears trivial. When person in charge is not in immediate vicinity inform him at earliest opportunity but not later than quitting time on day of occurrence.

(b) Obtain medical attention."

The trial was postponed and conducted on December 5, 1980. Following the trial, Claimant was dismissed from the service on December 19, 1980. A transcript of the trial has been made a part of the record. We find that the trial was conducted in a fair and impartial manner. Objection was raised to the introduction of Claimant's prior record in the trial. We do not find such procedure to be in violation of the Agreement or prejudicial to Claimant. An **employee's** past record may always be considered in determining the discipline to be imposed for a proven offense, but not as proof to sustain the charge.

There was substantial evidence adduced at the investigation, including Claimant's statement, that Safety Rule 3000, quoted in the notice of charge, was not complied with by Claimant. In the trial, or investigation, Claimant alleged that he was injured on duty on September 19, 1980, and testified that he had never reported the alleged injury to his Foreman. He stated that he reported the injury to the Supervisor Structures **"About** a month after the injury. **I'm not sure."** The Supervisor Structures testified that the first knowledge he had of an alleged injury to Claimant was on November 4, 1980, but he understood that the injury occurred on September 23. The Assistant Supervisor Structures testified:

"Q. Mr. **McDade** on the morning of September 23, 1980, did you receive a call from Mr. Wilson and if so what was it about?

A. Yes, I did, he told me that he was going home and going to have to hunt a doctor that something was wrong and I asked him if he was hurt, and he told me No, he didn't know what was wrong. I told him to go on home. I did question him, tho, if he was hurt on the job. He said, No, he didn't know what was wrong, he was **going** to see a chiropractor.

Q. Did Mr. Wilson at some later date inform you that he may have been injured while on duty?

A. No, sir."

The Carpenter Foreman testified that Claimant never informed him of any alleged on-duty injury.

It is clear from the trial that Claimant did not comply with the explicit provisions of Safety Rule 3000. The Board **recognizes** the importance of promptly submitting personal injury reports. The Carrier is entitled to receive such reports promptly, as such incidents may involve liability on the part of the Carrier, and any **employee** who does not comply with the accident reporting rule does so at his peril.

Based upon the record, there is no proper basis for the Board to interfere with the disciplinary action of the Carrier.

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

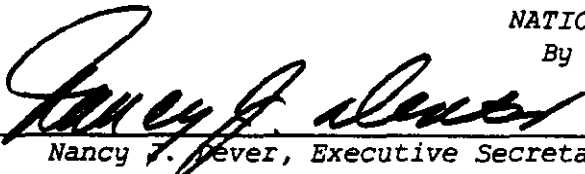
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois this 30th day of **November 1984**.