

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25296
Docket Number MW-25115

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company
(Former Illinois Terminal Railroad Company)

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

(1) The thirty (30) days of suspension imposed upon Section Laborer M. Callender for alleged "failure to follow instructions to immediately report personal injuries to your foreman or appropriate railroad official December 6, 1981", for alleged "failure to follow instructions when you went to St. Joseph's Hospital on December 7, 1981" and for alleged "falsification of an injury report on December 8, 1981" was without just and sufficient cause, arbitrary and on the basis of unproven charges (System File N&W1982-4/MW-STL-81-14).

(2) The claimant's record shall be cleared of the **charges** leveled against him and he shall be compensated for all wage' loss suffered:

OPINION OF BOARD: An investigation was held on January 14, 1982, to determine whether Claimant failed to report immediately his alleged personal injuries to his Foreman on December 6, 1981, failed to follow instructions when he went to St. Joseph's Hospital on December 7, 1981, and falsified an Injury Report on **December 8, 1981**. Based upon the investigative record, Claimant **was** notified by letter, dated February 2, 1982, that he was being assessed a thirty (30) day suspension for the aforesaid actions. The suspension ran from February 3, 1982 **through** March 5, 1982.

In defense of his petition, Claimant argues that his Foreman was fully apprised of his injury since the Foreman was present when the injury occurred on December 6, 1981. **He** asserts that the corroborative eyewitness testimony provided by his **co-workers** disproves the denials of Section Foreman Terry L. Hitchcock and Roadmaster **Tunnie** Kitchcock who testified they were unaware Claimant sustained **an** injury on December 6, 1981. Claimant avers that Section Foreman Hitchcock was also present in the truck when the work **gang** returned to its headquarters and was able to hear the crew discuss his injury. Claimant testified at his investigation that he did not know if reporting **an** accident would be considered grumbling and indicated that he "really did not know what to do". He denied falsifying the Injury Report. filed on **December 8, 1981**; and contended that he went to the hospital several hours after the injury "only" because the pain in his leg intensified.

Carrier asserts that Claimant failed to report his purported injury to Section Foreman Hitchcock who **was** present at the **situs**, contrary to the explicit requirements of Rule 1001 of NW Safety Rules and Rules of General Conduct. Section Foreman Hitchcock testified at the investigation that Claimant had not reported any injury to him and disclaimed any awareness or knowledge of an injury. Roadmaster Tunnie Hitchcock testified that Claimant had not reported an injury to him and indicated he **was** unaware **an** injury occurred. Rule 1001 provides:

"Employees must report personal injuries to their immediate supervisor or the designated employee **imme-**
diately in charge of the work before leaving the Company's premises. The supervisor or designated employee in immediate charge of the work is responsible for reporting all personal injuries witnessed by the supervisor **or** designated employee known to the supervisor or **desig-**
nated employee to insure that reports will be completed and distributed promptly in accordance with Company rules.

Failure to report a personal injury by the injured person or the employee in immediate charge of the work may result in disciplinary action.

Every case of personal injury, accident or damage to **property** must be reported as soon as possible by quickest available **means** of communication and a written report on the prescribed form rendered promptly. Such reports must contain full details and names and addresses of all witnesses and all particulars of the occurrence."

Carrier avers that Claimant was fully mindful of his reporting obligations as evidenced by his five (5) prior injuries and his **signaturized** acknowledgement of this responsibility when he signed Bulletin MW-86 on October 19, 1981. This Bulletin set forth procedures for injured employees. It requires that seriously injured employees will be taken immediately to the hospital or the **Doctor's** office and requires that all other injured employees will be taken to the Foremen's office. Carrier maintains that Claimant failed to observe the relevant injury notification procedures and blatantly falsified the Injury **Report** when he noted that Section Foreman Terry Hitchcock **and** Roadmaster **Tunnie** Hitchcock witnessed the accident. It contends that he was dishonest and as such, the discipline imposed **was** warranted.

In our review of this **case**, we **concur** with Carrier's position. While an accident may have occurred when Claimant **and** his three (3) co-workers were moving rail, the record is clear that Claimant failed to notify his Foreman in accordance with the pertinent rules when he was injured. Merely relying on the supposition that the Section Foreman and the Roadmaster were de facto aware of this injury is insufficient, especially where Claimant had experienced prior injuries **and** was fully mindful of his reporting obligations. His situation is not that of a new or inexperienced employee. To be sure, a testimonial conflict

exists between the Supervisor's denial of the alleged accident and the Claimant's co-workers who testified otherwise, but this impasse does not override Claimant's primary responsibility to observe the rules. He was patently remiss by not formally or explicitly notifying his Supervisor of his alleged injury and his assertions that the Section Foreman and Roadmaster had probable knowledge is unpersuasive. Under these circumstances and in view of his past disciplinary record, the discipline assessed was neither unreasonable nor an abuse of managerial discretion and it is hereby affirmed.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.