

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25315
Docket Number MS-25366

Marty E. Zusman, Referee

(Mark A. Jones

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company
(Lake Region)

STATEMENT OF CLAIM:

"I, Mark A. Jones was wrongfully discharged from my employment without just cause or proven facts based on an alleged General Safety Rule 1001 Violation and as such am entitled to be reinstated with full seniority, all other rights unimpaired, my record cleared and compensation for all wages lost."

OPINION OF BOARD: On March 2, 1982, Claimant Jones was sent a letter of notification to report for a formal investigation to determine his responsibility in failing to report a personal injury in violation of General Safety Rule 1001. On March 25, 1982 following consideration of the investigation, Claimant was notified that he had been found guilty as charged and that he was dismissed from service with Carrier.

The record before this Board shows that while Claimant may or may not have been injured at work on January 21, 1982, this much is clear. Claimant was aware of the Rules, including Safety Rule 1001, and the requirement to report all personal injuries to the "immediate Supervisor" before leaving work. If that was not possible, then according to the Rule the injury "must be reported as soon as possible by the quickest available means of communication...". Claimant reported no injury to his Foreman and therefore violated the Agreement. Claimant maintains that no claim of injury was ever made and therefore dismissal is unjustified. The record of this case as handled on property substantiates Carrier arguments that Claimant did maintain a possible injury in discussions with a Clerk on January 26, 1982, whereby Claimant stated he told her that "I didn't know if I hurt my back on the job or not". In addition, a District Claim Agent reported that Claimant phoned on February 1, 1982, and indicated "that he had been injured in the vicinity of Euclid, Ohio on January 21st, 1982". Claimant first denied and then after hearing testimony admitted contacting the Claim Agent's Office fully eleven (11) days later.

The accepted norm in discipline cases is that there be substantial evidence defined as "such relevant evidence as a reasonable mind might accept as adequate to support a 'conclusion'. (Consol. Ed. vs. Labor Ed. 305 U.S. 197, 229). With regard to the evidence in the instant case a review of the record indicates that the requirements of this Rule have clearly been met. Carrier finding of guilt is substantiated.

It has been established in previous Awards that this Board does not presume to substitute its judgment in discipline cases for that of Carrier when there is substantial evidence to warrant ~~the~~ conclusion of guilt, as there is in the case at bar. Carrier has the right to expect its ~~employees~~ to comply with its Operating Rules. The discipline ~~imposed~~ in the ~~instant~~ case is justified considering ~~the~~ testimony presented at the ~~investigation~~ and the serious nature of the offense. Finding no evidence that the Carrier's assessed discipline was unreasonable or unrelated to the seriousness of the issue, this Board will leave the Carrier's action undisturbed.

FINDINGS: The Third Division of the ~~Adjustment~~ Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole ~~record~~ and all the evidence, finds and holds:

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

Cairn denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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