

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number 26483**
Docket Number **MW-26425**

Rodney E. Dennis, Referee

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company
(former **St.** Louis-San Francisco Railway Company)

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

(1) The dismissal of Track Foreman M. R. Casey for alleged violation of Safety Rules 585 and 589 of the Safety and General Rules of the Burlington Northern Railroad and Rule 885 of the Rules of the Maintenance of Way Department 'wherein you failed to report a personal injury to your immediate supervisor that you allegedly incurred on January 25, 1983, till a period almost ten months later' was without just and sufficient cause (System File **B-1435/MWC 84-4-25A**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was at the time of the incident that gave rise to this case working as a Track Foreman on Gang 133 at William Springs, Missouri. Claimant did not report for work on January 26, 1983. He was not in contact with the Railroad until February 10, 1983, when he submitted a request for a 60-day leave (personal illness). Additional requests were submitted and approved. On November 7, 1983, Claimant returned to work. On November 10, 1983, Carrier received a letter from Claimant's personal Attorney stating that Claimant had retained him to process a Claim for damages against Carrier, account Claimant was injured in an accident on the track on January 25, 1983. Claimant did not report the alleged injury when it occurred nor, at that date, had he submitted any personal injury forms or personal injury reports. The first time Carrier was aware of the accident was on November 10, 1983, when it received the Attorney's letter.

After a " Investigation of the matter by Carrier officials, Claimant was dismissed from service for failure to report the accident. He was charged with a violation of Rule 585, Rule 589, and Rule 885.

"Rule 585. All accidents/incidents must be reported to immediate supervisor as **soon** as possible by first available means of communication. F-27 to follow to immediate supervisor, division superintendent and/or terminal or shop superintendent.

Rule 589. An employe having any knowledge or information concerning a" accident or injury to himself or others must complete Form 12504, Report of Personal Injury, in triplicate, before his tour of duty ends (or as soon thereafter as possible), supplying the information required. All copies are to be sent to the superintendent.

* * *

Rule 885. All accidents resulting in injuries to employes when on duty, and off-duty accidents where they occur on railroad premises, and all accidents to persons other than employes occurring on railroad property, regardless of the extent of injuries, and all accidents resulting in property damage must be promptly reported to the Superintendent.

* * *

A Hearing into the matter was held. Claimant was found guilty as charged and dismissed from Carrier's service on January 10, 1984. The Transcript of that Hearing has been made a part of the record of this case. A review of that record reveals that Claimant was afforded all procedural and substantive rights guaranteed by Agreement and that it supports a finding of guilt.

All Divisions of this Board have commented many times on the serious nature of failing to report on-duty accidents immediately. Carrier has a right to know when an accident takes place. Failure to notify Carrier can, in the final analysis, be costly to both Carrier and the injured employee. Maintenance of **Way** employes are fully aware of the requirement to report an accident immediately. Claimant in this instance failed to report the alleged accident for almost ten months. He then did so by having his Lawyer write Carrier and tell it that a damage Claim would be filed. Carrier concluded that Claimant's failure to report the accident was of such a serious nature that it dismissed Claimant. We find no basis in the record to dispute this action.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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 9th day of September 1987.