

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26526
Docket Number MW-26500

Edwin H. Ben", Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company (Southern Region)

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

1. The dismissal of Trackman A. R. Stewart for alleged 'falsification of personal injury reports, involving injury allegedly occurring at Peru, Indiana, at approximately 4:00 P.M., April 27, 1984, on camp car' was without just and sufficient cause and on the basis of unproven charges (System File C-D-2351-MG-4679).

2. The claimant shall be reinstated, his record cleared of the charge and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant held the position of **Trackman** with a service date of April 15, 1980. By letter dated May 11, 1984, Claimant was charged with falsifying personal Injury reports. Hearing was held on May 22, 1984. By letter dated May 25, 1984, Claimant was dismissed from service.

The record reveals **that** on May 1, 1984, Claimant called the Track Supervisor's office and spoke with Equipment Supervisor C. L. Wimmer informing Wimmer that he desired a week's vacation due to a broke" hand sustained over the previous weekend. Wimmer inquired if the injury was job related. According to Claimant, he told Wimmer "that my name was Audies Stewart . . . and that I had injured myself over the weekend playing football. . . ." Medical reports submitted during the Investigation show that the injury occurred on April 29, 1984 (a Sunday) **and that** Claimant injured his left hand "playing ball." Notwithstanding the above, on May 8, 1984, Claimant filed an injury report stating that he injured his hand on April 27, 1984, while slipping in a camp car. The instant charges followed.

Initially, we find no merit to the Organization's argument that Claimant was denied a full and fair Hearing as a result of the Carrier's alleged failure to furnish the General Chairman with a timely notice of the Investigation and a copy of the letter of charges. Putting aside the factual dispute that exists over this issue (the Carrier claims that notice was provided to the General Chairman), we find that Claimant waived the alleged procedural infirmity by stating at the Hearing that he was ready to proceed with the Investigation without the presence of a Representative.

With respect to the merits of the Claim, we find substantial evidence in the record to support the Carrier's decision to impose discipline. Claimant filed an injury report stating that his hand injury occurred in a camp car while at the same time admitting that he injured his hand while not on duty and on different day than stated in the report and further sustained the injury while playing football. Moreover, the injury report lists another employee as a witness to the event. That employee denied knowledge of the injury. The Carrier was therefore justified in concluding that Claimant filed a false report. Under the circumstances, we cannot say that the imposition of dismissal for such an offense was either arbitrary or capricious.

I" light of the above, it is unnecessary to address the other arguments raised by 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 September 1987.