

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27971
Docket No. MW-28257
89-3-88-3-34

The Third Division consisted of the regular members and in addition Referee Stanley E. Kravit when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The thirty (30) day suspension imposed upon Steel Erection Foreman R. L. Winn for alleged violation of General Rules 'A', 'B' and 'E' and Rules 600 and 4004 as contained in Form 7908, was without just and sufficient cause, exceedingly harsh and in violation of the Agreement (System File D-92/870174).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered as a result of his suspension from service including any and all benefits he would have received if he had not been suspended."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On July 3, 1986, Claimant was a Steel Erection Foreman with 6 years of service. He apparently fell on the job on that day, but did not report any injury or fill out an accident report. During two conversations with his Supervisor on that day he failed to mention any fall or injury.

Upon leaving work he experienced severe back pain and was treated, first, by a chiropractor, and then at a hospital from which he was released about midnight. Claimant testified that on July 4, 1986, he was in too much pain to call his Supervisor and that on July 5, he was unable to get a home telephone number for either of his immediate superiors.

On July 7, he did speak with his Supervisor by phone. According to Claimant, he told his Supervisor about falling on July 3, and subsequently experiencing pain. He asked for a week's vacation in order to recover from his injury without experiencing any lost time.

The Supervisor contradicted this testimony. He stated that on July 7, he asked Claimant whether his injury was on-duty or off-duty and Claimant told him it was an off-duty injury.

"Q. Are you sure he said off-duty?

A. Yes, sir. If he had not said it was an off-duty accident, I would not have given him a week's vacation."

The two men spoke again by phone on July 10, when Claimant called to request additional time off. According to his Supervisor, it was at this time that Claimant first mentioned that he was going to claim an on-duty accident. A report form was brought to him and subsequently submitted to the Carrier on July 16, 1986.

When questioned about the conversation of July 7, Claimant responded as follows:

"Q. On July 7th, did you state to him that it was an on-duty injury?

A. Well, maybe not in those words, but I did tell him that I did fall on that day....

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A. Well, I really can't remember how the conversation went. Like I said, I just requested to take the vacation; it was more or less my idea to avoid...help the company out and avoid a lost time accident."

Claimant's testimony regarding the conversation of July 7, 1986, lacks credibility when compared to his testimony that he was in too much pain to report the accident on July 4, and that he tried but was unable to do so on July 5. If he had been intent on reporting an accident for 2 or 3 days he would have done so clearly on July 7, and his own recollection of having done so would be equally clear. The Hearing Officer was entitled to resolve the credibility issue in favor of the Supervisor's version of the July 7, 1986, conversation.

Claimant testified that, as a Foreman, he knows the Rule regarding filling out of accident reports and enforces it. This was all the more reason to see to it that this was specifically done in his own case on July 7, even conceding his excuses for not having done it between July 3 and 7.

Rule 4004 states:

"REPORTING. All cases of personal injury, while on duty, or on company property must be promptly reported to proper authority on prescribed form."

The Hearing Officer resolved the credibility issue against Claimant, who was subsequently suspended for 30 days. It has consistently been held that this Board cannot set itself up as trier of fact when conflicting testimony appears in the record. This Board does not pass on the credibility of witnesses.

"So long as the testimony of a Carrier's witness is not so clearly devoid of probity that its acceptance would be per se arbitrary and unreasonable, this Board may not substitute its judgment in cases of this type." (Third Division Award 25102)

Therefore, there is sufficient substantial evidence in the record from which to conclude that Claimant violated Rule 4004 as charged. In view of the necessity of filing timely and accurate accident reports, the Board cannot say that the 30 day suspension was so excessive as to be arbitrary, unreasonable or capricious.

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 29th day of June 1989.