

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Track Laborer R. Lee for alleged violation of 'Rules M (failure to properly report personal injury), M842 (failure to wear appropriate safety device), and M801 (accident proneness)' was without just and sufficient cause, arbitrary, capricious and on the basis of unproven charges (System File MW-85-42-CB/53-851).

(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."

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.

Claimant was employed as Laborer for Carrier from September 1980, until December 1981, when he was furloughed. Some three years later he returned to service on June 11, 1985, but was withheld from service pending investigation and subsequently terminated for failure to report a personal injury to his eye on the job on June 18, 1985.

On June 21, 1985, Claimant reported to his supervisor that while knocking on anchors three (3) days earlier on June 18, 1985, he had sustained an on-the-job injury to his eye. Specifically, Claimant reported that he had removed the required safety goggles and that an errant rock or particle had

been thrown up and struck him in the eye. According to Claimant, two other employees had witnessed this injury. When later interviewed, however, one of these asserted witnesses said he had not seen the accident occur, and the other recanted and asserted that he had falsely corroborated Claimant's version of the accident as a favor to Claimant. In any event, it is clear that Claimant did not report the eye injury at the time of its occurrence but rather filed his report three (3) days later.

Carrier subsequently charged Claimant with failure to properly report an injury and failure to wear the appropriate safety device, as well as "accident proneness." It is patent that Claimant failed to wear the safety glasses and failed to report the accident in a timely fashion. We need not reach and do not decide the issue of "accident proneness," other than to observe that this Claimant had filed four (4) previous on-the-job injury reports in a timely fashion during his fifteen months of compensated service with Carrier. Obviously Claimant knew the procedures for proper and timely reporting of such injuries but failed to comply with those procedures in the instant case.


The record amply supports Carrier's finding of culpability on the charges of failure to report an injury and failure to wear safety devices. The penalty is harsh, but given the record of this short term employee and Carrier's potential liability, we cannot find that Carrier acted arbitrarily, unreasonably or capriciously in severing the employment relationship.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.