

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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-one (31) days of suspension imposed upon Track Welder Helper M. A. Mojica for alleged violation of General Rules 'A', 'E', 607 and 4004 of Form 7908 on September 15, 1986 was unjust, on the basis of unproven charges and in violation of the Agreement (System File D-100/870453G).

(2) The Claimant's 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.

By letter dated September 17, 1986, Claimant was notified to report for a Hearing with regard to determining responsibility:

"for your alleged personal injury at Pollard Jct., ... indicating a violation of General Rules A, E, 607 and 4004 of Form 7908..."

Following the Hearing, Claimant was notified that he had been found guilty of "not reporting on duty personal injury in violation" of the General Rules indicated above and was assessed a thirty-one (31) day suspension.

During the progression of this Claim on the property, the Organization raised issues of procedure, merits and assessed discipline. Procedurally, the Organization argues a violation of Rule 48(c), that the charges were unclear and imprecise, that the Claimant was charged with one offense and disciplined for another, that the transcript was altered and that the Hearing Officer conducted the Hearing with bias and a lack of objectivity.

Rule 48(c) states in pertinent part that:

"Prior to the hearing, the employee alleged to be at fault shall be apprised in writing of the precise nature of the charges sufficiently in advance of the time set for the hearing to allow reasonable opportunity to secure a representative of his choice and the presence of necessary witnesses."

The record indicates Claimant did not receive a written copy of the notice of Hearing. However, Claimant stated he became aware on September 18, 1986, of the Hearing and contacted the Organization. He was represented at the Hearing and stated that "we desire no postponement." Within the intent of the Rule, Claimant's rights to Agreement due process were met with no fatal prejudicial error.

With respect to the other procedural issues, the Board finds that the interpretive variance between the charges and discipline was not material. We find no procedural violation of the Agreement rights of the Claimant established by probative evidence that precluded a fully prepared defense or denied the Claimant or his representative any Agreement due process rights.

As to the merits of the instant case, there are major inconsistencies in the report of witnesses and that of the Claimant. Claimant's letter dated December 8, 1986, points to numerous problems in testimony and fact. The central issue is whether sufficient evidence has been presented by the Carrier to establish guilt. 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'" (Conso. Ed. vs Labor Bd. 305 U.S. 197, 229). In the instant case the Board finds the evidence substantial. We do so because as an appellate tribunal we are not in the position to make judgments of credibility or determinations of which testimony is honest (Public Law Board No. 1, Award No. 1; Third Division Award 25316).

In the instant case, we find that Carrier's determination is supported in the record by the fact that Claimant's Supervisors and co-workers testified that he had a sore back for two to three weeks prior to the incident of September 15, 1986, and, in fact, that no injury occurred on that day. Claimant stated he was unsure of any injury that occurred on that day. On the following day he reported that an on-duty injury had occurred. There is nothing in the record to substantiate that the Claimant in these events acted in a reasonable manner.

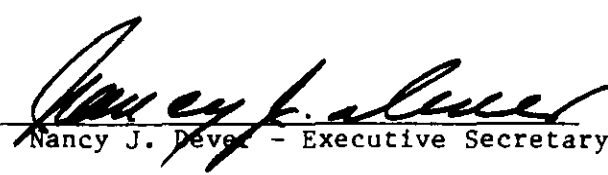
Carrier has the right to require its employees to comply with its Rules. Claimant did not comply and the evidence of false injury report is substantial. The Board must find that the Claimant is guilty as charged. With respect to the discipline, the Board notes that such actions have led to dismissal (Third Division Awards 25415, 25162). We leave the Carrier's action undisturbed.

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 March 1990.