

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30257
Docket No. MW-30891
94-3-92-3-750

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc., (former Louisville
(and Nashville Railroad Company)

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

- 1) The dismissal of Assistant Foreman R. V. Washburn for alleged '...responsibility in connection with the personal injury that occurred to your left knee on July 22, 1991, which resulted in you violating CSX Transportation Safety Rules 1 and 40.' was without just and sufficient cause, excessive, on the basis of unproven charges and in violation of the Agreement;
- 2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record 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 employe 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.

The Organization has raised objection to arguments made de novo by the Carrier in its Submission to the Board. None of the material so offered will be considered by the Board in its determination.

Prior to his dismissal, Claimant was employed as an Assistant Track Foreman. On July 22, 1991, Claimant sustained a personal injury to his left knee, at LaGrange Siding, while climbing from a large hi-rail truck. Claimant did not report his injury until the following morning, after which he sought medical treatment from Baptist East Hospital in Louisville. As a result of that injury he was unable to make an immediate return to service.

By letter dated August 28, 1991 Claimant was instructed to appear for a formal Investigation into the incident. Following the Investigation, Claimant was notified of his dismissal from Carrier's service.

The Organization urges that dismissal for a first offense by an employee with an otherwise flawless record is excessively harsh. As is the case with many such injuries, Claimant was not fully aware of the extent of the damage done to his knee until 24 hours after the injury occurred. Moreover, it points out that Claimant was not negligent in his conduct preceding the injury and, therefore, bore no responsibility for the injury sustained. In normal circumstances, the Organization's position might be persuasive.

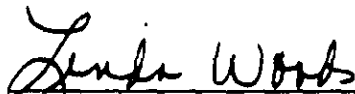
In the instant case, however, there is an additional issue, inseparable from the issue of Claimant's alleged "responsibility in connection with [his] personal injury." Testimonial evidence on the record established that Claimant declined to report his injury because he feared he could not pass the drug test which would likely be administered as part of his overall medical exam. A careful review of the entire transcript of the Investigation reveals sufficient internal inconsistencies in Claimant's testimony to persuade the Board that he did, in fact, decline to report what was apparently a serious and painful injury for fear of failing the drug test. In light of the foregoing, the Board does not find Carrier's dismissal of Claimant to be excessive.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.