

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30547
Docket No. SG-30598
94-3-92-3-365

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim on behalf of D.D. Cook, for removal of a reprimand from his personal record, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 35, when it placed a 'Reprimand' on his personal record following an investigation."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 basic facts of this case are not in dispute. Claimant is employed as a Signalman. A major derailment and a chemical spill occurred on April 14, 1991, in Edgewood, Illinois. Repairs and cleanup of the spill continued through April 15 and 16. Claimant was involved in the signal repair work resulting from the derailment.

Claimant experienced minor throat discomfort at the work site during the repair and cleanup work on April 15 and 16. However, he did not file a personal injury report. At 2:30 AM on April 17, he awoke with a severe sore throat which he also felt in his chest. Due to a strike on April 17, Claimant did not report to work and did not file a personal injury report. On April 18, Claimant reported to work and filed a personal injury report.

By letter dated April 22, 1991, Claimant was directed to report to an Investigation to determine whether he "failed to properly report an alleged personal injury on April 15 or April 16 at Edgewood, Illinois." At the conclusion of the Investigation, Claimant received a letter of reprimand for failing to properly report an alleged personal injury on April 15 or 16, 1991 at Edgewood, Illinois.

Carrier maintains that Claimant violated Maintenance of Way and Structure Rule X. That Rule reads in pertinent part as follows:

"REPORT INJURIES AND DEATHS

Personal injuries to employees or known injuries to other persons must be reported immediately to proper authority."

Carrier argues that the Rule clearly states that personal injuries must be reported immediately. It insists that the Rule does not provide an exception for injuries that seem minor in their severity.

Carrier contends that Claimant suffered discomfort and a sore throat while working at the cleanup site on April 15 and 16. It asserts that Claimant's supervisor was available on both days. However, Carrier notes that it is undisputed that Claimant did not report his injury to his supervisor. Thus, Carrier argues that there can be no dispute that Claimant violated Rule X by failing to properly report the personal injury he sustained on April 15 and 16.

Carrier maintains that the discipline it imposed was appropriate. It cites two Awards in which it asserts that discipline more onerous than a reprimand was sustained for an employee's failure to immediately report a personal injury. Therefore, Carrier argues that the reprimand it issued Claimant was less severe than the discipline it could have imposed.

Accordingly, and for the foregoing reasons, Carrier asks that the claim be denied.

The Organization, on the other hand, maintains that the imposition of discipline in this matter was totally inappropriate. It contends that Claimant had nothing to report on April 15 and 16. The Organization argues that even though Claimant suffered some discomfort, he had no way of knowing that he had been injured. It alleges that once Claimant knew he was injured, he promptly filed a personal injury report. Thus, the Organization asserts that no violation of any Rule occurred. Therefore, it insists that the

reprimand should be removed from Claimant's file.

The Organization maintains that even if the Claimant had reported his discomfort to his supervisor, no personal injury report would have been filed. It alleges that the record shows that Claimant's supervisor knew that several employees were experiencing discomfort. However, the Organization contends that no personal injury reports were filed. The Organization argues that Claimant should not be disciplined for failing to file a report, when even his supervisor did not think it was necessary to do so.

Finally, the Organization complains that Claimant worked at the derailment site on April 15 and 16 without being issued protective clothing and a breathing apparatus. It argues that Claimant should not be disciplined for failing to report an injury which was caused by Carrier's failure to issue appropriate safety equipment.

Accordingly, and for the foregoing reasons, the Organization asks that its claim be sustained.

After careful review of the entire record, we are convinced that the claim must be sustained.

The obligation upon employees to immediately report personal injuries is clear and unequivocal. Failure to do so warrants severe discipline. There are no exceptions for minor injuries. Nor are there exceptions for injuries which might have been prevented if different equipment had been issued to the injured employee. When an employee is injured on the job, the employee must report that injury to a supervisor and file an appropriate injury report.

Here, however, there is no persuasive evidence that Claimant knew he was injured on April 15 or April 16, 1991. Although he experienced some discomfort in his throat, that is very different than an injury caused by a known event. Claimant simply had no way of knowing that he was injured on April 15 or April 16. Without that knowledge, Claimant cannot be found to have violated Rule X. Therefore, the reprimand issued to Claimant was not supported by the evidence.

Claimant clearly knew he was injured on April 17, 1991. Yet he waited until April 18 before filing an injury report. He certainly should have notified Carrier of his injury more promptly. However, Claimant's failure to do so does not warrant the discipline imposed by Carrier in this matter. Claimant was not by Carrier with failing to report an injury on April 17. Such a charge was not investigated by Carrier and Claimant was not found to have failed to report an injury on April 17. Therefore, he may not be disciplined for that

omission.

Accordingly, and for the foregoing reasons, the Organization's claim is sustained. The reprimand shall be removed from Claimant's personnel file forthwith.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.