

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32495
Docket No. MW-32459
98-3-95-3-376

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(Illinois Central Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman R. E. Williams because he allegedly ' . . . violated Rule 1 of the Illinois Central Safety Rules when you failed to report an alleged personal injury prior to the end of your tour of duty and before leaving company property on October 25, 1994.' was arbitrary, capricious, excessive and in violation of the Agreement (Carrier's File 245 MofW).**
- (2) As a consequence of the aforesaid violation, the Claimant shall receive the benefits of the remedy prescribed by the parties in Rule 33(I)."**

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 were given due notice of hearing thereon.

By letter dated October 31, 1994, the Carrier advised the Claimant to attend a formal Investigation on November 9, 1994 "to determine your responsibility . . . in failing to report an injury immediately to proper authority, which allegedly occurred on October 25, 1994 near Anna, Illinois. Following an Investigation, the Carrier, by letter dated November 11, 1994, informed the Claimant that he had been dismissed from service because he violated Rule 1 of the Carrier's Safety Rules because of his failure to report an alleged personal injury prior to the end of his tour of duty and before leaving company property on October 25, 1994.

The Claimant was employed as a Trackman on October 25, 1994 under the supervision of Track Foreman J. C. Menser. The Claimant's gang had completed their assignment after which the gang was instructed to travel to Dongola. Since it was too cool to ride on the back of the truck, Menser told the Claimant to ride on the tamper.

In describing his accident, the Claimant said that as he "was walking along" and "evidently" there was ". . . a big rock I walked on or stepped on just as I was approaching the tamper. . . . I was three or four feet from the tamper. My leg stepped on some object there and my feet went in like that . . . and I went down but . . . I thought I just made an awkward step . . . and lost balance . . . anyway it didn't hurt. . . . I climbed up on the tamper" and went to Dongola.

After the Claimant left the property, he dropped off a co-worker in Ullin. He then drove his vehicle to Cairo where he was staying overnight at the Railroad Motel. Before arriving at the Motel, the Claimant stopped for gas. The Claimant was about to leave his vehicle to pay for gas when he discovered that he had "no use of his left leg. . . ." He sat in his vehicle for awhile before paying for the gas.

When the Claimant reached the Motel, he said that his leg was hurting. He put "some rubbing alcohol on his knee" and began "hoping for the best, that it would be better."

The following morning, on October 26 the Claimant reported to work and reported his injury to Menser, who assisted him in completing an injury report. Menser then accompanied the Claimant to the hospital where his knee was x-rayed and placed in a splint. The hospital also referred him to his personal physician.

In light of the record, serious consideration must first be given to the Claimant's personal injury report. Although it contains various errors which are not contested by the parties, there is the following description of how the injury occurred: "Stepped up on tamper, twisted knee." The Claimant, however, denied that he twisted or sprained his knee when he mounted the tamper. He stated that he injured his knee while "walking along" and as he approached the tamper, he stepped on a big rock and "went down" - it was an "awkward step" and he "lost balance."

Menser assisted the Claimant in filling out the personal injury report. Although the Claimant denied that he told Menser that he injured his knee while mounting the tamper, he signed the personal injury report and is held accountable for the information on the report, especially the description of how the injury occurred.

Furthermore, on October 25, Menser was behind the Claimant as he [the Claimant] mounted the tamper. While they rode together on the tamper, the Claimant did not mention to him that he might have twisted his knee.

The Claimant failed to contact the Carrier about his injury after leaving the property and before reporting to work the following morning. However, it should be noted that the Claimant was dismissed because of his failure to report his injury prior to the end of his tour of duty and before leaving company property on October 25. It is also important that the Claimant was not dismissed for reporting an injury which did not arise while he was on the property. Moreover, no prejudice to the Carrier could be claimed since the Claimant suffered his injury about 4:15 P.M. near the end of his shift and he reported the injury when he reported to work the following morning.

There is no question but that an employee may have a trivial accident on Carrier's property which subsequently leads to injuries, the seriousness of which could not have been anticipated. However, the discrepancy between the Claimant's personal injury report and his testimony during the Investigation on how his injury occurred on October 25 cannot be ignored.

In light of the nature of the injury which did not immediately manifest itself, and in consideration of the Claimant's long term service of 19 1/2 years with the Carrier, we find that his dismissal was excessive. Thus, the Claimant is to be returned to service with seniority unimpaired, but without compensation for time lost. Prior to his return

to service, the Claimant shall be subject to passing a return-to-duty physical examination.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of March 1998.