

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36576
Docket No. MW-36584
03-3-01-3-99**

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company (Western Lines))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Track Walker C. R. Roman for his alleged violation of Union Pacific Rules 1.6(3), 1.1.3 and 1.2.5 when he allegedly did not complete an accident report on the prescribed form was without just and sufficient cause, based on unproven charges, excessive and an abuse of the Carrier’s discretion (Carrier’s File 1225697 SPW).**
- (2) Track Walker C. R. Roman shall ‘...now be reinstated to the service of the Carrier on his former position with seniority and all other rights restored unimpaired, compensated for net wage and benefit loss suffered by him, and the alleged charge(s) be expunged from his personal record.’”**

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.

At the time of his dismissal, the Claimant was employed as a Track Walker with approximately 36 years of service and no prior discipline. On December 21, 1999, following an Investigation and Hearing held on December 1, 1999, the Claimant was informed by certified letter that the discipline of dismissal for violating the Carrier's Operating Rules concerning insubordination and the immediate reporting of personal injuries was being assessed against him.

The Organization contended that during the Investigation, the Carrier presented insufficient evidence of the Claimant's guilt of all the charges. According to the Organization, "when proper consideration is given to the Claimant's length of service, his limited comprehension of English and the fact that his foreman instructed him not to report the injury, the ultimate penalty of dismissal can only be viewed as excessive and abuse of Carrier discretion." As a result, the Organization requested that the discipline be removed from the Claimant's record and that the Claimant be immediately reinstated to service with full seniority and compensation for all wages and benefits lost as a result of the discipline.

The Carrier argued that substantial evidence of the Claimant's guilt was established during the Investigation. According to the Carrier, the transcript revealed that on August 20, 1999, the Manager Track Maintenance was informed that the Claimant suffered a personal injury while working with a backhoe three months earlier. The Carrier asserted that several attempts by the Carrier to obtain a report of the alleged injury from the Claimant were unsuccessful, and that the Claimant had initially agreed to fill out a personal injury report on October 1, 1999, but then changed his mind. The Carrier emphasized that it was not until November 4, 1999 that the Organization furnished the Carrier with an undated accident report signed by the Claimant. That report showed an accident date of "May 1999" and a statement that the Claimant had been struck by the backhoe boom while changing ties.

The Carrier strenuously argued that the Claimant's failure to make a prompt, written report at the time the injury occurred is evidence that he violated Rules 1.1.3 and 1.2.5. The Carrier emphasized that the Claimant was insubordinate when he failed to comply with the Carrier's instructions that he provide proper documentation and complete the necessary paperwork regarding the injury, in violation of Rule 1.6(3).

The Board notes that during the on-property handling of this case, the parties did not raise any procedural objections regarding the handling of this case and the Board finds

none. The Claimant was afforded a fair and impartial Investigation and received due process pursuant to the Agreement.

Regarding the merits of this case, the Board carefully reviewed the parties' Submissions, the Investigation transcript and attached exhibits and finds substantial evidence of the Claimant's guilt of the charges. The record reflects that the Claimant signed for and thereby received the Carrier's certified letters dated August 7, August 17, and September 24, 1999 requesting that he obtain a medical evaluation from his personal physician following the Carrier's observation of his unsafe behavior on August 3, 1999. The record reflects that the Claimant did not submit the requested medical information but that the Carrier obtained it after it pursued the matter with the Claimant's wife. The Manager Track Maintenance testified that on September 24, 25, and 28, 1999 and on October 1, 1999 he instructed the Claimant to complete an accident report regarding the alleged May 1999 injury. According to the record, the Claimant never completed the injury report. Rather, the Organization submitted it on November 4, 1999. Based on the foregoing, the Board concludes that the Claimant was insubordinate and that the charge of insubordination was proven.

Regarding the charges concerning the Claimant's failure to file a proper, written injury report at the time of the alleged May 1999 personal injury occurrence, the Claimant testified that during his 36 years of Carrier service he had filled out an accident report at least once during his career. He also testified that he was aware of the Carrier's policy regarding injury reporting. Accordingly, the Board concludes that these charges were proven, and that the Claimant was guilty of failing to file, in a timely manner, a proper, written injury report regarding the May 1999 alleged injury.

The Board emphasizes that the Rules the Carrier sought to enforce in this case were reasonable and such enforcement was necessary to ensure that the Carrier's operations would continue in a safe and efficient manner. With regard to prior cases involving proven charges of insubordination, many Awards of this Board have upheld the Carrier's right to require employees to follow reasonable instructions and grieve perceived injustices later through their designated representatives. Moreover, it is widely recognized that Rules requiring the timely and proper reporting of all injuries and safety conditions must be strictly observed by all parties. As the Board stated in Third Division Award 26483:

"All Divisions of this Board have commented many times on the serious nature of failing to report on-duty accidents immediately. Carrier has a right to know when an accident takes place. Failure to notify Carrier can, in the

final analysis, be costly to both Carrier and the injured employee. Maintenance of Way employees are fully aware of the requirement to report an accident immediately.”

With respect to the degree of discipline assessed here, the Board has considered the Organization’s arguments concerning the Claimant’s length of Carrier service and his unblemished disciplinary record up to the date of the instant offense. Accordingly, although the Claimant’s guilt of the charges has been established by substantial evidence, given his length of service and clean record, the Claimant shall be reinstated to service on a leniency basis with seniority unimpaired, but without the payment of any back wages. The time held out of service will be considered a period of actual suspension.

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 16th day of June 2003.