

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41691
Docket No. CL-41934
13-3-NRAB-00003-120269

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

PARTIES TO DISPUTE: (Transportation Communications International Union
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(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13217) that:

Carrier acted in arbitrary and unjust manner when on May 24, 2010, Carrier issued a record suspension of 30 days, Level S, and a three (3) year probation period to Claimant James Esposito at Cicero, Illinois, thereby violating Rule 56 of the TCU Agreement, along with other pertinent rules and agreements not specifically stated herein.

Carrier shall now be required to remove all references of Claimant's charges, investigation and discipline assessed from Claimant's personal record.

Carrier shall further be required to compensate Claimant for any lost earnings as a result of Carrier's charges and decision.”

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.

The Claimant, following a disciplinary Investigation, was assessed a 30-day suspension coupled with a three-year probationary period for violating Rule S-28.1.3 of the Carrier's Safety Rules. The Safety Rule, in pertinent part, requires employees to:

“Report by the first means of communication any . . . personal injuries”

The Claimant's personal injury was described in his written accident report, which was read into the record of the Investigation. The accident report, dated April 13, 2010, recited that at about 11:30 P.M. on April 11, 2010:

“I then turned and stepped up to the asphalt. When I shifted my weight to step up my foot slipped and rolled to the side. I felt a small amount of pain, but proceeded to the ramp vehicle to be taken in for the night. The pain increased as I walked from the hostler parking area to the building. I went home. When I got out of my car I couldn't apply any pressure to my left foot; I then proceeded to the Emergency Room and was told I had a sprained ankle.”

The Claimant's testimony at the Investigation was essentially in accord with his written statement.

The Carrier's Manager of the Hub operations at Cicero, Illinois, testified that she received a telephone call from the Claimant at “approximately 11-11:30 a.m,” on the morning of April 12. The stated purpose of the call was to ascertain the procedure to be followed after suffering an on-duty injury. The Claimant was advised to call his supervisor, which he did thereafter.

A review of the above facts shows that the Claimant knew that he had suffered an on-duty injury either before he left the Carrier's property or, at the latest, an hour later after he arrived at his home. There is no contention, let alone evidence, that the Claimant was not aware of Safety Rule S-28.1.3, or that he could not have notified a Carrier supervisor at the Hub at any time after he became aware of the injury on the evening of April 11. Instead, the Claimant delayed until 11:00 A.M. the following morning, at the earliest, to contact the Carrier. Clearly, the Claimant had not complied with his obligation to “report by the first means of communication” the on-duty injury incurred.

As noted above, the discipline assessed following the Investigation was a 30-day suspension coupled with a three-year probationary period. The Board has consistently held that failure to promptly report an on-duty injury subjects the employee to severe discipline. Typical of such cases is Third Division Award 26663, wherein the Board stated:

“ . . . the purpose of the reporting requirement is that the Carrier is entitled to receive such reports promptly since such incidents may involve liability on the part of the Carrier. The reporting requirement also benefits the employee due to the obligation of the Carrier to furnish medical care to an injured employee. Third Division Award 24654; Fourth Division Award 4199. Indeed, we stated in Third Division Award 25162, ‘any employee who does not comply with the accident reporting rule does so at his peril.’ Claimant clearly did not meet his obligations under the Rule and we can find no reason to justify disturbing Carrier's action of dismissal.”

The discipline assessed in the instant case was neither excessive nor arbitrary. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of September 2013.