Award No. 4640
Docket No. MW-4598

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier erred in assessing B&B Foremen W. H. McKneely thirty demerit marks and a six days' suspension on account of his alleged improper handling of a false report of an accident on September 6, 1946;

(2) That B&B Foreman W. H. McKneely shall be reimbursed for his loss of six days' pay and that the thirty demerit marks be removed from his record.

OPINION OF BOARD: The facts here are not in dispute. The case grows out of the failure of the claimant B&B Foreman to report an alleged accident in accordance with Carrier's Rule 39, Personal Injuries. The rule reads, in part, "In case of injuries of any kind, to himself or anyone in his employ . . . the foreman must immediately make a report by wire . . . and follow it as soon as possible with a written report to the supervisor . . . Foremen are not to exercise their discretion as to what injury is, or is not, important enough to be reported . . . "

John Davis, one of claimant foreman's carpenters, reported, around noon one Saturday, that he had got creosote in his eye while loading piling on Friday. He asked to be sent to the doctor. The crew was near Jackson, Mississippi, where the Carrier maintains medical and hospital services.

Claimant suspected Davis of faking the accident. He did not report it. Instead, he sent Davis to a doctor eighty-five miles away with a note to the doctor to send the bill to him. He did this, he said, because he already had been criticized by his superiors for having too many personal injuries. He said he thought if Davis in fact, as he suspected, had not had an accident he was willing to pay the small cost of an examination by a private physician of his choice to avoid further criticism.

The attempt backfired. Davis complained to the Carrier a few days later that his eye was not improving. It developed he had not had an accident, thereby confirming claimant's early suspicions, but that he had acquired some disease of the eye not related to loading of creosoted piles. It is now said for claimant that inasmuch as Davis was not injured at work he should not be disciplined for not reporting the incident. How can there be a violation of Rule 37, it is urged, when, in fact, there was no accident?

It is not necessary to stress the importance of safety and safety procedures in the railroad industry whether they apply to the traveling public or to employes. Carriers, as public utilities, are peculiarly vulnerable to all manner

of claims growing out of accidents or alleged accidents. For several years a special effort has been made to improve the safety record of this and other Carries as applied both to the traveling public and to employes. Reference is made in this record to the fact that records of the American Association of Railroads show this Carrier to have achieved second place among the railroads of the country in safety. We may only speculate with respect to what this means in lives saved, in human suffering avoided and in dollars conserved.

That this accomplishment and the effort put forward to achieve it has a bearing on the instant case is evidenced throughout the record by special safety meetings at headquarters of supervisors, attended by claimant, special safety bulletins distributed to the staff and by safety talks by claimant's immediate supervisor that were heard by claimant, by Davis and by other members of his crew. Some of this represented a special drive inspired by top officials to bring the record of the region to which he was attached into a more favorable position relatively to other regions whose records were better. Claimant was fully aware of this.

These special safety drives sometimes have one drawback. Not all of the effort goes to prevent accidents. It has been urged in behalf of Claimant that they inspire a tendency either to minimize accidents or not to report them at all. Apparently that is what happened here. Claimant already had been criticized by his superiors for personal injuries to men working under his supervision. He attempted to avoid it in this case.

He was thoroughly familiar with the rule and with Carrier's policy with respect to reporting accidents. The rule allows no discretion. It has been urged in his behalf that if he and other foremen lived up to the rule literally they would have little time for other work. We are not disposed to accept this as a valid defense for violation of the rule nor, indeed, can it be said that the fact that the irritation in the eye derived from a disease rather than from an injury, as claimed by Davis, represents a valid excuse for such violation. Claimant's function with respect to injuries, under the rule, is one of reporting rather than diagnosis.

Claimant admits that the investigation that preceded imposition of discipline was conducted in a fair and impartial manner.

We conclude there is no evidence of record that warrants reversal or modification by this Board of the action taken by the Carrier in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jursidiction over the dispute involved herein; and

That we find no evidence of record that the Carrier erred, as charged, in imposing discipline.

AWARD

Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 18th day of November, 1949.