

Award No. 4718

Docket No. MW-4732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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 that:

(1) The Carrier improperly assessed the service record of Extra Gang Foreman J. B. Rea, Louisiana Division, with thirty demerit marks because of his handling of an alleged personal injury to a member of his gang on December 6, 1947.

(2) The service record of Extra Gang Foreman J. B. Rea, Louisiana Division, be cleared of these referred to demerit marks and that he be so notified.

OPINION OF BOARD: This is a discipline case involving the assessment of thirty demerits against the Claimant for failure to report an alleged personal injury in violation of Carrier's operating Rule 39. The rule is quoted in full in the Employees' submission. The undisputed facts are that on Saturday, December 6, 1947 an Extra Gang Laborer, one B. B. Leonard, reported to his foreman, Claimant Rea, that he had injured his eye by getting something in it while at work. Claimant gave Leonard an order to a company doctor on Saturday afternoon but did not make report until Monday, December 8, 1947. Testimony of the laborer at the investigation of Claimant was to the effect that he reported the alleged injury to Foreman Rea on Friday evening, December 5, but Claimant denied that. Claimant testified that on the afternoon of December 6, 1947 he made attempt by telephone to report the alleged injury but was unable to contact anyone. He did admit that he did not attempt to make a message and that it would have been possible for him to file a message to his supervisor and other officers. Employees contend that Claimant acted in a reasonable and practicable manner in handling the matter and did comply with the rule, at least to the best of his ability under the conditions and circumstances.

In recent Award 4640 this Board had occasion to consider a discipline case involving a violation of this very same rule. Referee Carmody in the Opinion in that Award points up the importance of Rule 39. There is no doubt that the Carrier has a right to promulgate such rules for its protection against unjust and unwarranted claims. That case involved a more flagrant disregard of the requirements of the rule than that which is alleged in this docket. There, however, the punishment assessed was more severe than in the instant case. In this case the contention of the Employees cannot be sustained. It is to be noted that the rule does not permit the exercise of discretion by the foreman as to what injury is or is not important enough to be reported and it requires an immediate report by wire. Foreman Rea admitted that he made no attempt

to make a message and that it would have been possible for him to have done so. Thus, taking his own version of this incident as true, he stands in technical violation of the rule. The contention that it subsequently developed that Laborer Leonard had no injury at all but was suffering from a disease of the eye has no bearing insofar as the offense is concerned, as indicated in Award 4640 with which we agree.

There is no contention that the hearing on the property was not conducted in a fair and impartial manner. We find nothing in the record to warrant a holding that the discipline assessed was unduly harsh or arbitrarily or capriciously imposed.

It follows that a denial Award is in order.

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 Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.