

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

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

Nicholas J. Fesi, Tallyman, Philadelphia Transfer, Philadelphia, Pennsylvania, Philadelphia Terminal Division, be returned to service with all rights unimpaired and that he be reimbursed for all monetary loss sustained. (Docket E-814)

OPINION OF BOARD: The charges and dispositions made upon the property were as set forth below:

Charge (1) "Did not report promptly nor obtain immediate medical attention for personal injury sustained February 12, 1950, Philadelphia Transfer, violation of Safety Rules 2001 and 2002."

Disposition: Thirty Day Suspension.

The excuses offered for failing to report the injury suffered upon February 12, 1950, until the following morning, were (1) that it was first believed of no consequence, (2) that Carrier's medical department was closed on Sunday, the day of the injury.

We find no justification to disturb the determination made in connection with this charge. Under Rule 2001, and it would appear reasonable in this respect, employees are required to report promptly to immediate supervisor all injuries no matter how trivial. A purpose of the Rule, which goes beyond claimant's own physical condition, is to give opportunity for immediate investigation either to protect against groundless claims or to correct conditions which might endanger other employees if permitted to continue, or both. Here, the alleged defective car floor, a hazard to others, illustrates a reason for the rule which has no connection with the extent of claimant's personal injury.

Finding support for the suspension under Rule 2001, we need not consider the additional ground set forth in Charge (1).

Charge (2) "Made false statements in connection with the circumstances of personal injury sustained February 12, 1950, at Philadelphia Transfer."

Disposition: Dismissal.

The conflict in facts as presented at the hearing revolve around the cause of injury. It is important to note that there was no eye witness to the accident. We come no closer to the true fact of the occurrence than the exclamation that claimant made and the concurrent explanation given to employe McGuire that he had bumped his shin on the side of a truck while moving a carton. This, as against his testimony that he injured his shin on the lip of a truck while assisting some unidentified trucker with the moving of a heavy drum of castings. The charge partakes of the nature and degree of seriousness of perjury. Courts require far stricter proof of perjured testimony than we find in the record before us and we find no reason to accept far less where a person's reputation for veracity and his means of livelihood are at stake. It must be kept in mind that claimant's explanation was not discredited by an eye witness. No showing of bad reputation for veracity was made. The incident was reported the morning following and prompt investigation by the Carrier, for example, could have revealed the true condition of the car floor to determine whether or not a hole in fact existed. Witness McGuire and another testified that such was a fact and Carrier is bound by the unimpeached testimony of its own witnesses. This lends credence to claimant's story as does the testimony of other Carrier witnesses that claimant had assisted them with their loads. True, there were facts appearing of record which discredited claimant's explanation of the cause of injury but they do not contribute the clear, convincing proof which would sustain guilt to the charge made. We find that the Carrier acted arbitrarily and capriciously in assessing the penalty of dismissal upon the record made upon Charge (2). To affirm the penalty in face of the weak proof adduced here would serve to intimidate the less courageous in resisting unfounded charges because of fear of a more serious charge which might follow if conflict in testimony developed during the hearing, as it often does.

Charge (3) "You sustained personal injuries on February 1, 1944, September 1, 1945, October 4, 1947, February 12, 1950, and March 28, 1950, thereby demonstrating that you are an unsafe employe."

Disposition: Dismissal.

The conclusion that claimant was an unsafe employe, if correct, must find support in facts outside of the record. At no place in the record do we, or did Carrier's reviewing officers, find information concerning the department accident record at Philadelphia Transfer during the period involved upon which a comparison with claimant's record could be made. Evidence was adduced to show that this claimant was compensated for past injuries suffered that involved loss of time. No disciplinary action was taken, although hearings were held, in connection with any of the incidents related, except that of February 12, 1950, upon which negligence can be imputed now to support Charge (3). The addition of several zeros does not give a number. Only if a finding of negligence had been made in these cases could the accumulative effect be contended to result in a conclusion that claimant was an unsafe employe.

We are compelled to find that Charge (3) is not supported by the record and that Carrier's action in dismissing claimant thereon was arbitrary and capricious.

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 jurisdiction over the dispute involved herein; and

Penalty assessed in connection with Charge (1) affirmed; penalties assessed in connection with Charges (2) and (3) set aside for reasons stated in the Opinion.

AWARD

That claimant be returned to service with all rights unimpaired and that he be reimbursed for all monetary loss sustained after first accounting for the thirty (30) days' suspension assessed in connection with Charge (1) which is hereby affirmed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1954.