

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20682  
Docket Number MW-20796

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Southern Pacific Transportation Company  
( (Pacific Lines)

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

(1) The dismissal of Extra Gang Laborer Herminio Isiordia was without just and sufficient cause, on the basis of unproven charges and without benefit of a fair and impartial hearing (System File 011-181 (I)).

(2) Herminio Isiordia be reinstated to service, with seniority and vacation rights unimpaired and be reimbursed for monetary loss suffered, all in accordance with Rule 45 (b).

OPINION OF BOARD: Claimant was dismissed from Carrier's service for his continued failure to complete a personal injury report as required by Rule M of the General Rules and Regulations and for violation of Rule 801. Those Rules read:

Rule M: "Each personal unjury suffered by an employe... must be reported without delay to his immediate superior and written report completely and correctly made must thereafter be promptly mailed to Superintendent."

Rule 801: "Employees will not be retained in the service who are....insubordinate."

Claimant was injured on May 25, 1972. On May 26 and May 30 his Foreman visited the hospital and tried to obtain the report. On the first visit Claimant was not physically able to complete it. On the 30th he began the course of conduct in which he persisted. He asked to see the reports of the foreman and the operator and refused to complete his report. On July 3 the Foreman and Roadmaster went to Claimant's home. He continued to refuse to fill out an injury report. The applicable rules were read and explained to him. He was then advised that continued refusal would result in a formal hearing.

It is clear that Claimant had notice as required by the Rule. There is no evidence that he could not attend for physical or other reasons. It appears that he had not asked his Local Chairman to represent him. Claimant did not appear at the hearing and no request for postponement was

entered in the record. Under all of the circumstances Carrier did not violate the Rules by proceeding in Claimant's absence.

Claimant was obliged to furnish Carrier with a report of his accident and he had done so on other occasions. The Rules and the procedure followed show that he, not his supervisor, was required to furnish the report. When his physical condition did not permit him to report Carrier desisted. It was not until he was physically able to complete the report that Carrier insisted upon it. The Organization's charge of unusual pressure is not supported by the facts.

The Rules require Carrier to furnish the Organization with a copy of the transcript. Carrier failed to do so. As soon as the matter was called to its attention Carrier did furnish a transcript. No prejudice to Claimant has been shown and the matter may be dismissed as a non-prejudicial error.

The Board has concluded that it must deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.