

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21514
Docket Number MW-21753

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Track Patrolman K. Gotfrey was capricious, arbitrary, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File D-19-75/MW-14-75).

(2) Mr. K. Gotfrey be reinstated with seniority and all other rights unimpaired with pay for all time lost subsequent to the date he is physically fit to return to work.

OPINION OF BOARD: Claimant was discharged after a hearing April 14, 1975, for failure to timely report an on-the-job injury. Claimant states he hurt his back while helping to roll a 55 gallon grease drum across the tracks in the snow. The full drums weighed upwards of 500 pounds.

The written report was made March 19, 1975, and the alleged injury occurred February 11, 1975.

The record is deficient. It does not contain the rule claimant broke in late reporting. It does not contain the reporting form, the subject of much discussion about wrong dates. Lay corroboration that the injury occurred is very inconclusive. And most importantly, the record is devoid of medical evidence concerning the actual injury. Claimant was in the doctor's office on February 12, why we do not know. We do see he was injured in an auto accident on February 5th.

An injury during course of employment is serious and potentially costly. We do not question the reasonableness of requiring an injury to be promptly reported and medically supported. The claimant has a burden in this respect. Given the state of this record, we cannot overturn the carrier's discretion in discharging claimant.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1977.

