

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22456
Docket Number MW-22526

Paul C. Carter, Referee

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

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

(1) The dismissal of Section Laborer J. T. Trejo was without just or sufficient cause and based on unproven and disproven charges (System File D-20-77/MW-13-77).

(2) The claimant shall be restored to service with all seniority and benefits unimpaired and with pay for all wage loss suffered, all in conformance with Agreement Rule 28(d)."

OPINION OF BOARD: The record shows that claimant was last employed by Carrier as a section laborer on March 2, 1976. He was originally employed on March 27, 1973, with several resignations and re-employment in the interim from March, 1973, to March, 1976.

On May 5, 1977, claimant was injured when a spike he was going to drive flew when struck and hit his left shin. On May 13, 1977, he was again injured when he released the handle on a tie-down device, which hit him and bruised his left side.

On May 17, 1977, written notice was given to claimant:

"Formal investigation will be held in conference room, Helper Depot, Utah, Friday, May 20, 1977, at 11:00 A.M., to determine facts and place responsibility, if any, in connection with your allegedly being careless of the safety of yourself and others and allegedly failing to exercise care in avoiding injuries to yourself and others after having sustained alleged personal injuries on May 5, 1977 and May 13, 1977."

Formal investigation was held as scheduled. Claimant was present and participated in the investigation, and was represented by the Local Chairman of the petitioning Organization. During the investigation no exceptions were taken by claimant or his representative as to the charge or the manner in which the investigation was conducted. At the conclusion of the investigation claimant's representative stated that the hearing "has been held in accordance with the current agreement."

On May 25, 1977, claimant was notified of his dismissal from service.

In the appeal on the property the General Chairman asserted that additional charges were preferred after the investigation started, in violation of the Agreement. In the submission to this Board the Employees continue this assertion, and also contend that the charge did not contain the specificity required to permit the claimant and/or his representative to prepare a defense.

It is well settled by case-law of this Board that if objections are to be taken to the notice of charge, the timeliness of the investigation, or the manner in which the investigation is conducted, such objections must be raised during the course of the investigation or they are considered to have been waived. Awards 14444, 16121, 16678, 22325, among others.

As to the merits of the dispute, Carrier's Operating Rule 802 reads:

"Employees who are careless of the safety of themselves or others, or guilty of acts of disloyalty, dishonesty, desertion, intemperance, immorality, insubordination, incompetency, willful neglect of duty, inexcusable violation of the rules, making false reports or statements or concealing facts concerning matters under investigation will be subject to dismissal."

Safety Rule "K" reads:

"An employee who is careless of his own Safety or that of others will not be allowed to remain

"in the service. Employees must not rely solely upon the carefulness of others, but must protect themselves when their own Safety is involved."

The above rules indicate clearly that an employee careless of his own safety or that of others will be subject to dismissal.

Substantial evidence was presented in the investigation conducted on May 20, 1977, to show that claimant's injuries on May 5 and May 13, 1977, resulted from his own carelessness, which, together with his record since last employed, justified the Carrier's decision to dismiss him from service. There is no proper basis for this Board to disturb the discipline administered.

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:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.