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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22936
Docket Number MW-22946

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Fort Worth and Denver Railway Company

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

(1) The dismissal of Trackman Johnny M. Moore was capricious, arbitrary, unwarranted and on the basis of unproven charges [System File F-8-78/.

(2) Trackman Johnny M. Moore shall now be allowed the benefits prescribed in Agreement Rule 26(c) and he shall be reimbursed for all expenses incurred in connection with attending the investigation."

OPINION OF BOARD: Claimant Johnny M. Moore, a trackman on Carrier's Extra Gang No. 2, was dismissed from service for failing to report an accident. On March 28, 1978, claimant informed Assistant Roadmaster F. R. Jones that he had hurt his back last summer and rehurt it on Wednesday, March 15, 1978.

In the process of filling out an accident report, it was discovered that claimant was not sure of just when or where he was injured. In an effort to ascertain the facts surrounding claimant's injury, Carrier convened an investigative hearing into the matter on May 15, 1978. Subsequent to that hearing, claimant was dismissed from service, effective May 26, 1978, for violation of Rules 2, 4, and 662 of the BN Safety Rules.

Rule 2 - Requires an employe to immediately report any injury or accidents by completing Form 12504 Report of Personal Injury.

Rule 4 - Requires that an injury of any kind, however minor, must be promptly reported.

Rule 662 - States that employes who withhold information or fail to give a factual report of any irregularity, accident, or violation of rules will not be retained in the service.

A review of the stenographic record of the May 15, 1978, hearing reveals that claimant was not denied any substantive procedural rights and that he was afforded a full and fair hearing. It also reveals that claimant had some major difficulty identifying just what day he sustained the back injury he supposedly received. While the failure to be able to settle on a specific date might call into question his honesty or his motives, this inability to specify a time is incidental to the dispute.

If claimant was injured on March 15, as he first claimed, or on March 21, 22, or 24, as he eventually stated, he has not met the requirements of Rules 2, 4, or 662. Rule 2 states that an employee, if injured, must complete Form 12504 before his tour of duty ends or as soon thereafter as possible. Claimant did not mention his injury until March 28th and a report was not submitted until April 3rd. This clearly is not what Rule 2 contemplates.

Just as Rule 2 was not complied with by claimant, neither was Rule 4 nor Rule 662. Given the fact that claimant is in violation or has not met the requirements of these cited rules, carrier has the right to impose discipline. Carrier chose to discharge claimant from service. This Board is mindful of the importance of prompt and complete reporting of accidents on railroad property and of the liability claims that railroads have lodged against them when employees are injured on the job.

With this in mind, the Board can fully understand Carrier's desire to impose a severe penalty on employees who do not comply with safety rules. It is the opinion of this Board that Carrier has not been arbitrary or capricious in this instance. Claimant violated three rules. Since claimant is guilty as charged and Carrier did not act in an arbitrary or capricious manner, this Board sees no reason to modify Carrier's action in any way.

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;

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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. Paulse
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.