

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23006  
Docket Number MW-23104

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Trackman C. E. Randolph was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File B-1819).

(2) Trackman C. E. Randolph shall be afforded the remedy prescribed in Article 11, Rule 91(6)."

OPINION OF BOARD: Claimant had been employed by Carrier as a trackman for about five months. He was dismissed from the service on August 14, 1978, for failure to report a personal injury which he allegedly sustained on August 3, 1978, and for failure to return to work after being released by medical authority. At the request of the Organization, a formal investigation was conducted on August 28, 1978, following which claimant's dismissal was affirmed.

The record shows that claimant allegedly sustained a personal injury about 11:30 a.m., August 3, 1978, while assisting other employees in moving a rail. He continued working that day but did not report the injury to his foreman. Carrier's Rule 713 reads:

"If physically able, an employee injured on duty must report the injury to his foreman or other supervisory officer before leaving company premises."

The claimant reported the injury to the foreman on August 4, 1978. He was taken to a hospital. The doctor at the hospital diagnosed claimant's injury as a pulled muscle, and advised claimant to stay off work the remainder of the day, Friday, August 4, not to lift anything heavy, and to report to Company Doctor Young on Monday, August 7, 1978. Claimant was examined by Dr. Young on August 7, 1978, and again on August 8, 1978, who rendered report dated August 11, 1978:

"I first examined this man on 8/7/78 for painful left sacro-? ? ? ?. He was strapped up for relief. I next saw him on 8/8/78 at which time he stated he was better. At that time he stated back was still painful. I could find no pathology."

There is substantial evidence in the investigation that claimant declined to return to work, after the Company Doctor advised the Foreman and the Roadmaster on August 9, that he was able to do so. The foreman contacted the claimant and inquired if he would return to work if the foreman assigned him light duty, but claimant refused. Claimant later refused to turn over to the foreman the release given him by Dr. Young.

Based upon the entire record, and considering claimant's short service, the Board does not find the Carrier's action to be arbitrary, capricious or in bad faith.

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 October 1980.