

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. LaRocco, Referee

Award Number 23484  
Docket Number MW-23926

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employees  
(Terminal Railroad Association of St. Louis

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

(1) The thirty (30) days of suspension imposed upon Track Laborer Verner E. Thompson for 'violation of Rule 1110' was unwarranted and wholly disproportionate to the charge leveled against him (System File TRRA 1980-5).

(2) Track Laborer Verner E. Thompson shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a track laborer, received a thirty-day suspension as the result of an investigation held on February 21, 1980 for his alleged failure to timely complete and file a personal injury form as provided by Carrier Rule 1110. According to the claimant, he suffered a back injury on January 7, 1980 while performing work for the Carrier. On that date, claimant did not fill out a personal injury form. While his foreman denied knowing of the injury in January, claimant testified that he casually mentioned the injury to his foreman. Two of claimant's fellow employees also knew of the ostensible injury. Claimant continued to work on a regular basis until February 8, 1980 when he complained about backpains. Claimant asserted the pains were related to the January 7th injury. On February 8, 1980, claimant and the two other employees filled out personal injury reports concerning the injury claimant allegedly incurred on January 7, 1980. The other two employees were reprimanded for their failure to file a personal injury report on January 7th.

The Organization raises two main arguments. First, the foreman knew of the January 7th injury and, therefore, he should have instructed claimant to complete the personal injury form. Second, the Organization accuses the Carrier of levying discriminatory discipline since the claimant received a more severe penalty than his two fellow employees for the same offense. The Carrier disputes each of the Organization's arguments and contends the record contains substantial evidence demonstrating that claimant failed to complete the required personal injury form.

Rule 1110 imposes an obligation on all employees to complete a personal injury report before leaving work on any day the employee is involved in an injury or witnesses an injury. The Carrier must strictly enforce Rule 1110 to enable the Carrier to allow injured employees to receive medical care, to mitigate

its liability exposure should the employe file a claim against the Carrier, to correct any condition causing the injury and to permit the Carrier to immediately investigate the incident. Third Division Award No. 19298 (Cole). The record, in the instant case, is clear. Claimant asserts he suffered a job related injury on January 7, 1980. He did not complete a personal injury report until February 8, 1980. While the foreman's knowledge of the injury is essentially irrelevant, this record discloses that claimant's foreman did not learn of the purported injury until February 8, 1980. Therefore, the record clearly shows claimant disobeyed Rule 1110.

We also rule that the Carrier's discipline was neither arbitrary nor discriminatory. Common sense dictates that the Carrier must strictly enforce Rule 1110. Third Division Award No. 22936 (Dennis). In this case, if the claimant had promptly reported his injury on the date he says it occurred, perhaps the Carrier would have had an opportunity to prevent the claimant from aggravating the purported injury on February 8, 1980. So, the Carrier must impose sufficient discipline to impress upon claimant his duty to report all real and suspected personal injuries. As to the disparate discipline, because the claimant was the primary protagonist in the January 7th incident, the Carrier could reasonably impose a harsher penalty on the claimant than it imposed on the two other employes who were merely witnesses.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

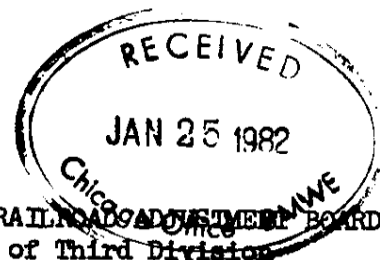
A W A R D

Claim denied.

ATTEST:

*A. W. Poulos*  
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division



Dated at Chicago, Illinois, this 8th day of January 1982.