

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23906
Docket Number MW-24263

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Illinois Terminal Railroad Company

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

(1) The discipline (reprimand) imposed upon Mr. J. D. Kelley for alleged violation of 'Rule 1' was unwarranted and on the basis of unproven charges.

(2) The claimant's record shall be cleared of the charge leveled against him."

OPINION OF BOARD: An investigation was held on August 30, 1980 to determine whether Claimant violated the Carrier's General Regulations and Safety Rules, specifically Rule 1 when he allegedly failed to report a personal injury that ostensibly occurred on July 2, 1980 while he was working on the Night Gang #14 under the direction of Foreman W. R. Burg. Based on the investigative record, Carrier concluded that he violated this rule and officially reprimanded him for his omission. This disposition was appealed.

In defense of his position, Claimant contends that he apprised Foreman Burg that he hurt his back but he continued his work because it wasn't "hurting that bad". He argues that he was unaware of the extent of his injury and thus did not complete a written report before leaving the property. He asserts that he complied with Carrier's safety rules and the evidence of record establishes that he comported with the applicable regulations.

Carrier contends that Claimant never notified his foreman on July 2, 1980 that he was injured while pulling spikes, but instead made out an accident report on July 18, some 16 days after the injury occurred. It avers that his foreman testified at the hearing that Claimant never reported his injury on July 2 and asserts that Claimant's testimony shows that he did not prepare an accident report until July 18. It argues that he plainly violated Rule 1 which requires employees sustaining injuries while on duty or on company property to report the injury and cause to the immediate supervisor or person in charge before leaving the property and his failure to comply with this rule warranted the penalty imposed.

In our review of this case we agree with Carrier's position. Careful reading of the investigative transcript does not reveal that Claimant notified his foreman on July 2 that he was injured while working and his failure to report his injury was a clear violation of Rule 1. The testimony of Foreman Burg indicates that his injury wasn't reported on July 2, pursuant to the explicit requirements of Rule 1 and Claimant's averment that he told his foreman that he hurt his back is insufficient by itself to justify his claim. He was obligated

to report the injury on July 2 in accordance with Rule 1 and not wait until 16 days later before filing an accident report. Rule 1 which is unambiguous and controlling herein, pointedly requires an employe to report an injury and the cause thereof to his immediate supervisor or person in charge before leaving the property and the record shows that Claimant didn't observe this rule. He should have formally reported this injury. In Third Division Award 16023, which sanctions Carrier authority to enforce its safety rules and regulations, we stated in part:

"There is no evidence in the record to support the claim:
1) There is nothing in the Agreement which prevents Carrier from making and enforcing a safety and operating rule such as its Rule 11, so long as the specific instance of enforcement does not violate the Agreement."

Carrier's enforcement of Rule 1 in this instance did not violate the Collective Agreement and the discipline imposed for this infraction was certainly not unreasonable. We will deny the claim.

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.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

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