

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24220  
Docket Number CL-24320

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9523)  
that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily dismissed Mr. S. J. Thompson from its service, following investigation, without giving reasonable consideration to all circumstances involved. (Carrier File - C)
2. Carrier's action was arbitrary, unjust and unreasonable.
3. Carrier shall now be required to return Mr. Thompson to its service with all rights unimpaired and compensate him for all wage losses sustained due to Carrier's arbitrary, unjust and unreasonable action.

OPINION OF BOARD: The Claimant, Samuel John Thompson, is a Yard Clerk at the Carrier's Madison Yard who has seniority since January 17, 1964. As a result of an investigation, the Claimant was terminated from service with the Carrier for violation of Safety Rule F, General Rules 1107 and 1110. These rules are as follows:

"Rule F Employees must report to the proper officer by quickest available means of communication, the details of accident, failures of motive power, failure in the supply of water or fuel, defects in track, bridges, signals or any unusual conditions which may affect the movement of trains."

"Rule 1107 When a person is injured, or if there is property damage, the employee in charge must be notified at once and he in turn must notify the Superintendent's office, and/or such others as may be required."

"Rule 1110 Each employee who may be in any way connected with or who may witness a personal injury, shall before leaving work, make a complete written report on both sides of personal injury form (A-54) and forward it to the head of his department, and shall also make such additional statements as may be requested by the Law or Claim Departments' representatives, without delay."

The essential facts are undisputed. The Claimant was working the assignment of the Chief Clerk beginning at 11:00 P.M. on September 27 through 7:00 A.M., September 28, 1980. Leaving the Clerk's office enroute to the Trainmaster's office in the Tower, the Claimant, in the act of delivering early morning turnover reports, bumped his elbow on a staircase support post. The time was approximately 6:05 A.M. He delivered the reports.

At 3:09 P.M., September 28, 1980, Claimant called the Crewboard office and laid off sick, reporting the injury. As suggested, he immediately called the Trainmaster. Thereafter, it was determined to mark Claimant as off with a personal injury. The next day, Claimant filled out an appropriate personal injury report.

The Organization argues Claimant did not know he sustained an injury until about 3:00 P.M. on September 28 when he woke up. Since Claimant was unaware of his injury until after leaving work, the Organization contends the delay in filing the personal injury is understandable and reasonable.

Careful review of the record before us leads this Board to unmistakably conclude the Carrier's assessment of the record correctly viewed the evidence as supporting a finding Claimant was aware he injured himself and simply did not comply with the understood rules. The Claimant acknowledged he was aware he bumped his elbow when it happened because he said it "hurt like hell," and "it almost brought me down to my knees because it hurt ...". There can be no doubt Claimant had the time and opportunity to properly report the injury as required.

Under these circumstances, this Board agrees that Carrier was justified in disciplining Claimant, however, we do not view his single infraction as justifying discipline in the form of dismissal. That action was excessive and lacked proportion to the justifiable discipline involved. This Claimant has been out of service for a lengthy period. We hold this time shall serve as a suspension, which should, in its severity, constitute sufficient notice to Claimant he must in the future comply with the Carrier's rules dealing with the reporting of injuries.

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 discipline was excessive.

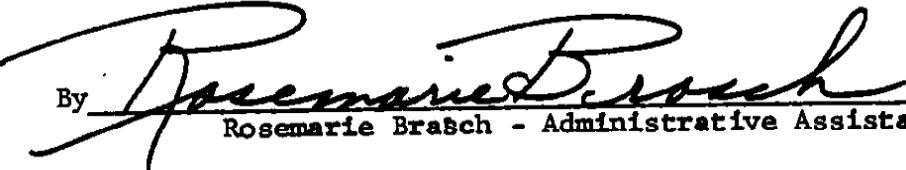
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.