

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24542
Docket Number MW-24722

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Laborer Nathaniel Evans for alleged insubordination on January 7, 1981 was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File C#4/D-2493).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, employed by the Carrier as a laborer, was dismissed from service by the Roadmaster on January 7, 1981, for insubordination because of his alleged failure to properly fill out what is referred to as "171-Injury Report", as instructed by the Roadmaster. At claimant's request, a hearing was conducted on January 19, 1981, following which his dismissal was upheld. An appeal hearing, provided for in the discipline rule of the applicable Agreement was conducted on February 24, 1981, and the Carrier rendered a decision on the appeal hearing on March 5, 1981.

On April 17, 1981, claim was filed by the Organization's General Chairman "in favor of Mr. Nathaniel Evans for reinstatement and pay for all time lost as a result of his dismissal from service." The Carrier contended in the on-property handling, and contends before the Board, that the claim was not received within the sixty-day time limit of Rule 47 of the schedule rules, and also contends that claimant's dismissal was justified.

We are of the opinion that the claim is properly before the Board. See Award No. 23346 involving the same parties as herein.

As to the merits of the dispute, the record shows that claimant was injured while on duty on January 5, 1981, was medically treated, and returned to work the same day. On January 6, 1981, he was handed a "Form 171-Injury Report", was instructed to complete the Form and return it to the Carrier. Claimant took the form home with him, and returned it to the Carrier the next day, January 7, 1981. He was called to the Roadmaster's office on January 7, 1981, was informed by the Roadmaster that the Form was not complete, and was instructed to complete the Form in the Roadmaster's office. He did not complete the Form in the Roadmaster's office, but insisted on taking it home again.

At the hearing conducted on January 19, 1981, the Roadmaster testified that he explained to claimant what was missing on the Form and the part that should be filled out; that he wanted the Form completed at the office; that he offered claimant help in completing the form, which he refused, at which time he was dismissed from the service. The testimony of the Roadmaster was corroborated by an Assistant Roadmaster, who also testified:

"Mr. Evans (claimant) said that we are doing it my way."

The claimant testified that he was familiar with the 171 Report and had been assisted in the past in filling out such reports by the Roadmaster and his clerical staff.

The record clearly establishes claimant's refusal to comply with the instructions of the Roadmaster and that he was guilty of insubordination. The Board recognizes the importance of promptly submitting properly filled out personal injury reports. The Carrier is entitled to receive such reports promptly, as such incidents may involve liability on the part of the Carrier.

The record also shows that claimant had previously been dismissed in April, 1980, for insubordination, and was later reinstated without pay for time lost. Claimant's prior record was brought out in the on-property handling.

Claimant's actions on January 7, 1981, together with his prior record, warranted the discipline imposed. There is no proper basis for the board to interfere.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983

