

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24589
Docket Number MW-24703

Tedford E. Schoonover, Referee

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

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

(1) The six (6) months of suspension imposed upon B&B Mechanic W. E. Jackson for alleged 'failure to comply with Rule 1110' and 'Rule F' in connection with an injury sustained by him on March 20, 1981 was without just and sufficient cause and based upon unproven charges (System File TRRA 1981-5).

(2) The dismissal of B&B Mechanic W. E. Jackson for alleged 'insubordination in that you failed to comply with specific instructions from your foreman resulting in an alleged personal injury to you on March 20, 1981' was capricious, arbitrary, unwarranted, without just and sufficient cause and on the basis of unproven charges (System File TRRA 1981-6).

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

OFINION OF BOARD: In this case two separate disciplinary actions arose out of the same injury. On Friday, March 20, 1981, claimant was employed as a B&B Mechanic. He had some 6 years service with the Carrier. During his tour of duty he was given specific instructions by his foreman. Claimant described the instructions as follows:

"load the bolts on the truck and to just put a few of them at a time in the bucket and set them on the truck and dump them in the buckets on the truck instead of picking up the full buckets..."

Instead of doing as directed Claimant proceeded in his own way. He described his actions and the resultant injury as follows:

"Well I hadn't put none on the truck at the time, I had five buckets that had to go on the truck. I had to fill all the buckets up and I took two, one in each hand I went to swing one in my left hand up on the truck and this is when I felt the snap in my neck and I never did get that bucket up on the truck with the other one in my hand. I had to set it down and load them one at a time up there."

Claimant alleged the injury occurred at about 1:00 PM, on Friday March 20, 1981. He stated it was only a twinge in his neck where he felt something snap. It did not pain him further and he continued to work the balance of the day. It was not until the next morning, Saturday, a non-work day, that he felt stiffness in his neck and had difficulty raising his arm. He testified as to trying to play golf on Saturday and Sunday but was unable to do so. On

Monday, he reported for work and advised his foreman of his injury but did not make out an injury report as required by the rules. He went to a doctor that evening. This was the last day he worked. He was in the office of the Carrier on Tuesday and Wednesday, discussed his injury with officers of the Company but still did not make out an injury report. Claimant telephoned Carrier Officer on Thursday, March 26 and stated he had another appointment to see a doctor on that date. Carrier did not hear anything further from claimant nor did he report for work during the following days. Finally, on April 6, 1981, the following letter was addressed to claimant:

"A hearing will be conducted at 1:30 P.M., Tuesday, April 14, 1981 in the Conference Room in the General Superintendents' office building, north end of the westbound, Madison Yards, Madison, Illinois to determine the facts and your responsibility, if any, in connection with your failure to comply with Rule 1110 of the General Rules, as revised January 10, 1980, concerning Accident-Personal Injuries and Rule F of the General Rules of the Safety Rules, effective May 1, 1975 in that you allegedly sustained an injury on March 20, 1981 and failed to report it in accordance with the above rules.

Arrange to be present. You are entitled to representation and witnesses in accordance with Rule 24 of the current agreement between the Terminal Railroad Association of St. Louis and the Brotherhood of Maintenance of Way Employees."

The hearing date was postponed until April 16, at request of the General Chairman. Based on the evidence adduced during the hearing Carrier addressed the following to claimant under date of April 22, 1981:

"An investigation was held in the Conference Room, General Superintendent's Office, N.E.W.B. Yard, Madison, Illinois at 1:30 P.M., April 16, 1981 to determine the facts and your responsibility, if any, in connection with your failure to comply with Rule 1110 of the General Rules, as revised January 10, 1980, concerning Accident-Personal Injuries and Rule F of the General Rules of Safety Rules, effective May 1, 1975 in that you allegedly sustained an injury on March 20, 1981 and failed to report it in accordance with the above.

As a result of this investigation, at which the charges were proved, effective immediately, you are suspended from service with this Company for a period of six (6) months. You may return to work on October 23, 1981."

The General Rules under which the disciplinary suspension was assessed are quoted as follows:

"GENERAL RULES

ACCIDENT-PERSONAL INJURIES

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."

"SAFETY RULES

F. Employees must report promptly to their immediate supervisor all injuries, no matter how trivial. In every case of personal injury in any branch of the service, a full and complete report must be made at once on prescribed form. They must obtain immediate first aid and medical attention for all injuries, when necessary."

Claimant admitted having been provided a copy of the above rules for which he signed a receipt. He said he was acquainted with the requirements of the rules.

Based on the evidence adduced during the hearing of April 16, 1981, Carrier concluded claimant's injury had been caused by his failure to follow the specific instructions of his foreman. Accordingly, Carrier addressed the following letter to claimant on April 22:

"A hearing will be conducted at 1:30 P.M. Thursday, April 30, 1981 in the Conference Room in the General Superintendent's Office Building at the north end of the Westbound Madison Yard, Madison, Illinois to determine the facts and your responsibility, if any, for insubordination in that you failed to comply with specific instructions from your foreman resulting in an alleged personal injury to you on March 20, 1981.

Arrange to be present. You are entitled to representation and witnesses in accordance with Rule 24 of the current agreement between the Terminal Railroad Association of St. Louis and the Brotherhood of Maintenance of Way Employees."

The hearing date originally set for April 30 was postponed to May 12 at the request of the General Chairman. Claimant's testimony during this hearing was in conflict with his statements in the hearing of April 22. In the former hearing he clearly admitted he did not follow the instructions of his foreman. In the hearing of May 12, he stated he complied with his foreman's instructions and denied the buckets were too full. His denial was countered during the hearing by Chief Engineer Bowman who related a conversation with claimant in Bowman's office on March 25, 1981, as follows:

**** He said he was loading bolts and he told me and almost as near as I can recall it that it was all his fault and that he had not obeyed his foreman. He didn't do what Jack had instructed him specifically on how he was to load the bolts, but he did not do that and he tried to load too many at one time. He said he filled two buckets reasonably full and had one in each hand and tried to swing the one in his left arm up to the truck bed while he was still holding the other one ****

and further on Page No. 11, he responded to the Conducting Officer's questions as follows:

Mr. Weitzman: But he did report to you that he failed to follow his foreman's instructions and loaded the buckets full is that correct?

Mr. Bowman: He volunteered it without any doubt that he said that it was his fault that he had overfilled or filled them reasonably full or words to that effect, yes sir."

The injury sustained by claimant caused him to be hospitalized and placed in traction for the period from March 29 to April 10. On April 30, 1981 he filed a suit against the Carrier for \$150,000 alleging continuing neck injuries resulting from the injury of March 20. Claimant never did file the injury report with the Carrier as required by rules.

The evidence on which both of the disciplinary actions were assessed is clear and conclusive. Claimant's credibility is damaged by his frank admission of failure to obey instructions during the hearing of April 16, and denying such failure at the second hearing. This conclusion is supported by the extensive testimony of Chief Engineer Bowman which was corroborated by Assistant Chief Engineer Perkins. Claimant's failure to follow instructions was apparently due to carelessness or indifference since he was not argumentative or obstinate when given the instructions by his foreman. But the fact remains he ignored the instructions, did the job his own way, and his neck injury was the result. That it was serious is indicated by the length of time he was hospitalized in traction. The entire chain of events serves to illustrate the urgent need for the Carrier to have injury reports filed by employees.

There are distinct similarities between this case and another between the same parties as covered by Award 23484 (LaRocco) wherein the importance of injury reports is discussed as follows:

"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 employee 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)."

Another case illustrating the importance of safety rules is contained in Award No. 24031 by Referee Sharp as follows:

"Adherence to the safety rules is of paramount importance. The instant safety rule is designed with the welfare of the employee in mind. His injury is immediately known to the Company so that it can promptly address his condition. Regardless of when Claimant acted, his supervisor was not promptly notified. If Claimant was injured on November 1, the fact that he worked the remainder of that day and the next under severe back pain could have aggravated the injury to a grievous extent.

"As an Award on this same property, No. 22650 stated:

'A Safety Rule, by definition, is not designed to proscribe willful infractions only, it is also carefully designed to address careless or indifferent behavior as well.'"

On the basis of the evidence and circumstances reviewed herein it is our conclusion that claimant was accorded his full rights of due process as provided in the Agreement. We find further that Carrier's disciplinary actions were just and reasonable.

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

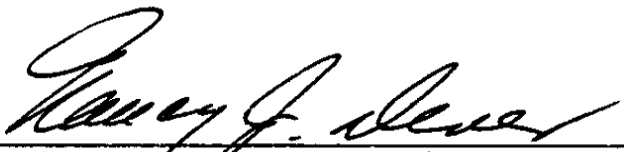
That the Agreement was not violated.

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 15th day of December 1983.