NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24741

THIRD DIVISION

Docket Number MW-24902

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The Chesapeake and Ohio Railway Company

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

(1) The dismissal of Carpenter R. W. Veeder for allegedly "falsely claiming an on-duty injury" was without just and sufficient cause and on the basis of unproven charges (System File C-D-1201/MG-3223).

(2) The claimant shall now be allowed the benefits prescribed in Agreement Rule 24(e).

OPINION OF BOARD: On August 25, 1981, the following letter was addressed to claimant by J. R. Rymer, Manager Engineering:

"Arrange to attend hearing in the office of Supervisor of Track, 900 Starkweather, Plymouth, Michigan at 9:30 A.M., Friday, September 4, 1981.

You are charged with responsibility, if any, in connection with falsely claiming an on-duty injury, in that you submitted an injury report on Chessie System Form CJ-68 which you dated 8-16-81.

Arrange for representation and/or witnesses if desired. Please acknowledge receipt of this letter."

The hearing was held on September 4, 1981, as scheduled. Both the claimant and his Organization Representative participated therein.

There is substantial conflict between claimants testimony and that of carrier witnesses. According to claimant he injured himself on the job shortly after lunch on August 13, 1981. He did not feel the injury sufficiently during the balance of the day and did not mention it to other members of his crew or to his foreman. On the following morning, having experienced severe pain during the night, he reported to his Supervisor Gerulski that he wanted the day off, that he had hurt himself and wanted to see his own doctor. He did not state at that time he had injured himself on the job.

Claimant's version of what he told the superviosr varies materially from what the supervisor reported. Supervisor Gerulski stated during hearing that claimant came into the office on the morning of August 14, complaining of a sore back caused by a hurt at home the night before. In response, the supervisor granted the requested day off and told claimant to bring in a doctor's certificate. During this conversation there was no reference to Form CJ-68--the injury report form. Carrier supplied five witnesses to the conversation, including claimant's foreman and a fellow worker. All testified that claimant stated in the office that he had hurt his back at home the night before. All were firm and definite in their testimony on this point.

In endeavoring to evaluate this portion of the testimony we are impressed with the fact that claimant made no mention of filling out a CJ-68 form while in the office although he was fully aware such was required no matter how slight an on-the-job injury. It is questionable why he insisted on seeing his own doctor if his was indeed an on-the-job injury. It is also open to question why he never reported his alleged on-the-job injury to either his foreman, Mr. Skow or to Mr. Gerulski. The first knowledge Mr. Gerulski had of the alleged on-the-job injury was seeing the injury report form when he returned from vacation on August 23.

After the morning meeting of August 14 in Mr. Gerulski's office, claimant contends he went to his own doctor, did not get in for an examination until afternoon and by the time he was finished, the rail office was closed. It was Friday and the office would not be open until Monday. He was told by his doctor that his back problem would keep him off work for awhile and not do anything at all. Claimant stated that on hearing this from his doctor he first decided to fill out the injury form. When he went to the rail office on Monday, August 17, and found no one there, he was told by Dorothy, a clerk to come back the next morning. He did so and filled out the injury form on August 18. He mistakenly entered August 16 as he prepared the form. While we can accept claimant's statement that he simply made a mistake when he wrote August 16 instead of August 18, we have real trouble with more substantive inconsistencies in the evidence. The most glaring is why, if he indeed suffered an on-the-job injury, he did not so advise Mr. Gerulski at their meeting on the morning of August 14. This is coupled with the fact that he had not told either his foreman or fellow workers the day before that he had hurt himself on the job. Such developments appear consistent with his not mentioning anything about an injury report and stating he wished to see his own doctor rather than the company doctor, while in Mr. Gerulski's office. The most prominent evidence contrary to his claim is the testimony of five witnesses that claimant stated he had hurt himself while at home the previous night.

Based on a thorough review of the evidence these inconsistencies cause us real problems in accepting claimant's version of events as fully credible. His testimony is essentially unsupported while the carrier position is supported by five witnesses. The only testimony advanced by claimant was to the effect that while unloading a truck on the afternoon of August 13, with a fellow employe Mr. Combs, he said his back felt funny. He also testified that on going into Mr. Gerulski's office the next morning he met Mark Stimson, another fellow employe and told him he had hurt his back on the job the day before.

Claimant did not arrange for either Combs or Stimson to attend his hearing as he was advised he could do in the charge letter of August 23. Carrier had five witnesses at the hearing in support of its charge and thus met its burden of proof responsibility. Having discharged its burden in this regard it then became claimant's responsibility to introduce evidence to the contrary. He had the right to call Messrs. Combs and Stimson but apparently chose not to do so. If he felt their testimony would have helped his case, he most certainly should have called them. But now to say that it was carrier's responsibility is futile, erroneous and a belated attempt to shift blame. After all, his reference to having discussed the matter with those two employees had not even been mentioned prior to his testimony at the hearing. For this reason, the carrier had no knowledge that they had any information on the matter. The purpose of hearings in disciplinary matters is to assure a claimant opportunity to introduce evidence in support of his position. Failure to do so is his responsibility. The principle is well established in many decisions and was well expressed in a Fourth Division Award No. 3578 by Referee Mesigh as follows:

"This Board would note that Procedural objections and want of 'due process', under the disciplinary rules of the Controlling agreements, are continually invoked by Petitioners and claimants alike which cloak themselves within their rights for fair and impartial investigative hearings, as an accused thereby assuring that the burden of establishing a findings of guilt against the accused employes rests upon the Carrier. This Board has always guaranteed those rights. But once charged and accused of a violation, let not the claimant or his representative fail to prepare their defense to said charge, by ignoring their procedural rights under the controlling agreement to present witnesses in support of their defense and other credible evidence. Once the burden of proof shifts from Carrier to the accused, it is incumbent for Claimant to defend and make his record." (Emphasis added.)

The essential import of the carrier charge is that claimant falsely claimed an on-the-job injury. The evidence adduced during the hearing shows a substantial prepondenance in support of the charge. We also find the hearing was conducted in a fair and impartial manner.

Filing false reports with respect to alleged personal injuries is a particularly serious offense in that it directly affects possible benefits accruing to employes injured on-the-job whether at fault or not. That a carrier looks on such dishonesty as intolerable is fully justified. Claimant's guilt in this case is coupled with a prior employment record which is somewhat less than exemplary. In the circumstances as reviewed herein we do not find the disciplinary action as arbitrary, capricious or a violation of carrier's discretionary authority in disciplinary matters.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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: Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of March, 1984