

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25133
Docket Number MW-25257

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman M. M. Daugherty for alleged violation of "Rule 3000 (a)(b)" and alleged "Falsification of a personal injury" was without just and sufficient cause (System Docket 694).

(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 M. M. Daugherty was employed by the Carrier as a Trackman. On March 20, 1980, he allegedly injured his back while "tossing" ties by hand. He did not, however, notify the Carrier of his alleged injury until on or about March 26th or March 27th and did not obtain medical treatment until March 31st. Claimant continued to work for a period of several days following the alleged injury, March 20th through March 22nd. Claimant was scheduled off work from March 23rd to March 27th for reasons not connected with the incident in question. Following Claimant's belated notification to the Carrier of his injury and examination by the Carrier's physician, he remained off work until found physically qualified by that Carrier's physician to return on February 7, 1981.

The Carrier conducted an investigatory hearing following Claimant's return to work and, based on the results of that hearing, dismissed Claimant for violation of Carrier's Safety Rule 3000 (a) and (b), which state:

"3000. Injured employee must immediately:

(a) Inform immediate supervisor, even though extent of injury appears trivial. When person in charge is not in immediate vicinity inform him at earliest opportunity but not later than quitting time on day of occurrence.

(b) Obtain medical attention."

The Organization appeals from the dismissal were unsuccessful, and the claim was brought before the Board.

Claimant testified at the investigatory hearing that he injured his back on March 20th, while working. Claimant concedes that he did not report the injury on the 20th as required by the Rule, but states that he did not do so simply because he thought the injury was minor. Claimant's foreman asserted that Claimant called him on the 27th to inform him that he would be off work. The Foreman stated that Claimant told him in that conversation that his back injury had occurred off-duty. Carrier witnesses testified further that Claimant gave no indication of his injury and made no complaint to his supervisor or other employees during the period from March 20th through 22nd.

Safety Rule 3000 is clear beyond any possibility of misinterpretation. It is an important rule, intended to ensure that injured employees receive prompt medical attention, to allow the Carrier promptly to investigate the incident giving rise to an on-job injury, and to protect the Carrier against fraudulent or exaggerated claims. Each of those purposes was or could have been compromised by Claimant's failure to report his injury immediately and to obtain medical attention.

It appears to the Board more probable than not that Claimant was injured at some time other than March 20th while engaged in some non-work activity. The Board rejects in this regard Claimant's challenge to the credibility of Claimant's foreman. The form reporting the accident, which the Organization asserts to contravene the foreman's statement that Claimant called him on March 27th because the form states that the Carrier first had knowledge of the injury on the 31st as a result of the medical examination, in fact supports the foreman's statement. In box number 26 of that form, the foreman stated that the disability began on "3/27/80", the date of the telephone call which the foreman testified he received from the Claimant. The form is consistent with the foreman's testimony that Claimant told him that the injury occurred while he was off duty.

It is, however, unnecessary for the Board to rely on the nature or degree of Claimant's misrepresentation of the time and circumstances of his injury, because Claimant admitted conduct clearly violative of Rule 3000 in that he did not report the injury on the date he allegedly incurred it, nor did he seek medical treatment. The effects of the delays by Claimant in reporting the injury and in obtaining medical treatment were measurably to increase the Carrier's exposure to claims, to delay the investigation of the incident, and, quite possibly, to worsen the injury and thereby cause additional time lost and costs to the Carrier.

The Carrier has a legitimate right to protect itself against such exposure by insisting on strict compliance with Rule 3000 and taking severe disciplinary action against employees who, as here, clearly and materially violate the Rule. The Board cannot find that the Carrier acted in an arbitrary or capricious manner in disciplining Claimant, nor can the Board conclude that the penalty of dismissal was excessive in light of the violation. Claimant's service of less than five years is insufficient to mitigate the penalty. Accordingly, the claim must be, and is, denied.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.