

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25162
Docket Number MW-25382

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Section Laborer D. Juarez for alleged "failure to promptly report alleged personal injury" sustained by him on July 12, 1982 was without just and sufficient cause, unwarranted and on the basis of unproven charges (System File D-41-82/MW-16-82).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered including overtime pay.

OPINION OF BOARD: At the time of the occurrence giving rise to the dispute herein, Claimant, with about four years of service, was employed by Carrier as a section laborer, assigned to the North Yard at Denver, Colorado, and was working under the supervision of Section Foreman E. J. Quintana and Roadmaster J. E. Vialpando.

On September 8, 1982, Claimant was notified by the Division Engineer:

"Formal investigation will be held at 10:00 A.M., Tuesday, September 14, 1982, in the Superintendent's Conference Room, North Yard, 901 West 48th Avenue, Denver, Colorado, to determine facts and place responsibility, if any, in connection with Section Laborer David Juarez's failure to promptly report alleged personal injury sustained by him while working as a section laborer at North Yard, Denver, Colorado, at about 2:00 P.M., July 12, 1982.

Your presence as principal at this formal investigation is required, with representative, if desired.

If you desire any witnesses to appear in your behalf, notify the undersigned promptly."

The investigation was held as scheduled. A copy of the transcript has been made a part of the record. In the investigation, request was made by the Organization representative that the wife of the Claimant be allowed to be present as a witness. The conducting officer responded to the Organization representative:

"Again your request will be denied as this is a company investigation to develop facts and it is for company employees only to attend."

No protest was made in the investigation by Claimant or his representative as to the ruling of the hearing officer. By proceeding without protest or objection in the course of the investigation, further protest was waived. Also, in the course of handling on the property the Carrier's highest designated officer of appeals advised the General Chairman that Company investigations have always been attended by Company employees, not family, friends or any other non-employees. The fact that Claimant's wife was not permitted to be present and testify did not invalidate the proceedings. Following the investigation, Claimant was dismissed from service on September 22, 1982.

Rule 1 of Carrier's Basic Rules reads:

"Employees injured while on duty must make verbal report to their supervisor not later than end-of-shift or tour of duty. As soon as practicable after accident, the injured employee must make report on Form 1922. Obtain immediate first-aid and necessary medical attention for all injuries."

Also, Agreement Rule No. 27 reads:

"Employees injured while on duty shall be given necessary medical attention as promptly as possible and they shall make written reports required by the Company of the circumstances of the accident as soon as they are able to do so. Copy of such reports shall be furnished the employee upon request, in which event receipt thereof will be acknowledged in writing."

Without attempting to review all the testimony in the rather lengthy investigation, suffice it to say that there was substantial evidence that Claimant did not report his alleged on-duty injury as required by Rule 1 of Carrier's Basic Rules heretofore quoted, or as contemplated by Rule 27 of the Agreement. Claimant did not allege an on-duty injury, or complete Form 1922 until September 7, 1982, at which time he alleged an on-duty injury to his back on July 12, 1982.

The Board recognizes the importance of promptly submitting personal injury reports. The Carrier is entitled to receive such reports promptly as such incidents may involve liability on the part of the Carrier, and any employee who does not comply with the accident reporting rule does so at his peril. See Awards 24014, 24031, among others.

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. Fever - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.