

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25249  
Docket Number MW-25258

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The sixty (60) demerits imposed upon Track Laborer B. Roberts for alleged violation of "Rule M" was arbitrary, unwarranted and on the basis of unproven charges (System File MW-82-160/355-79-A).

(2) The claimant's record shall be cleared of the charge leveled against him, the sixty demerits shall be removed from his record and he shall be compensated for all wage loss suffered and reimbursed for all expenses incurred attending the hearing held on July 30, 1982.

OPINION OF BOARD: Claimant B. Roberts, a Track Laborer, incurred a work related injury on May 18, 1982, but did not file a report of said injury on that date. On June 1, 1982, Claimant was assessed sixty demerits for failure to complete the report of said accident and Claimant thereafter requested a hearing. On June 21, 1982, Claimant was notified to attend a formal hearing which after postponement was held on July 30, 1982, to investigate the charge that he had failed to comply with Rule M of General Rules and Regulations of General Notice which reads in pertinent part:

"Rule M. Every personal injury suffered by an employee, and any injury to another employee or person, of which an employee has personal knowledge, must be reported without delay to his immediate superior prior to completion of tour of duty. ...

Employee and his immediate superior must thereafter without delay, and prior to completion of tour of duty, complete required reports on prescribed forms and furnish other required statements to proper authority."

While this Board notes numerous instances of conflict in the testimony, the following facts are clear. The record as developed on property indicates that the Claimant suffered a work related injury prior to the end of the work day on May 18, 1982. That injury was reported verbally around closing, but the appropriate forms were not completed. The Claimant admitted to a complete knowledge of the Rules during the hearing and although there is conflict as to whether the appropriate Form 2611 was filled out and signed on May 21st or 26th, the weight of the evidence is clear to a violation of Rule M. There appears to be no substantive mitigating circumstances to adequately, clearly and substantially explain Claimant's failure to complete the required forms. Claimant had a responsibility to do so and did not fulfill his responsibilities. Since this is the weight of the evidence in the case at bar, there is no basis for judging the discipline assessed by the Carrier as unreasonable, arbitrary or capricious. As such, the Board will not disturb the Carrier's determination in this matter.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.