

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25561
Docket Number CL-25377

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9811) that:

1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois, when it charged, held investigation and assessed discipline of ninety (90) days actual suspension to Employee C. P. Castillo on June 23, 1982.

2) Carrier shall now be required to clear Employee C. P. Castillo's personal record of all mention of charges, investigation and assessed discipline, as described in Item 1 above, and compensate him for all lost time caused by such suspension.

OPINION OF BOARD: The Claimant, Train Clerk C. P. Castillo, was assessed a ninety (90) day suspension for failure to file promptly Form 171 Report of Injury to Person for an injury that Claimant alleges occurred on May 8, 1982. The report was dated May 31, 1982.

The basic facts involved in this claim were not in dispute. The Claimant had back surgery in 1974 and 1976. On May 8, 1982, the Claimant's Supervisor told him to move approximately 20 boxes from one area of a storage shed to another. The Claimant told the Supervisor that he had had two operations on his back and then followed the order and performed the work. Following this, the Claimant says that he felt "discomfort". The Claimant worked on May 8, May 9 and May 10th and did not report any injury. On May 10, he wrote a letter to the Local Chairman of the Organization telling him about the incident on May 8. He had rest days and vacation between May 11 and May 20th. He returned to work on May 21, and worked that day. On May 21, he saw the Doctor because of pain in his arm and neck. The Doctor prescribed medication for Claimant's pain. The Claimant called in sick on the 22nd and was hospitalized on May 23, for treatment of a pinched nerve in his neck. On May 26, he called the Claims Office of the Carrier and asked for an Injury Report form, which was mailed to him. The Claimant was released from the hospital on May 29. The form was filed on May 31, 1982.

The Carrier's procedures for reporting personal injuries are stated in the Bulletin dated February 15, 1980, and the Bulletin dated January 4, 1982. The 1980 Bulletin states:

"In the event of any accident or incident involving personal injury, train-auto collision, derailment, or property damage to Railroad equipment or property, the following reports must be made:

"1. VERBAL report immediately to the dispatcher (in the case of mainline derailments) or your supervisor (such as Chief Clerk yardmaster, Foreman, Asst. Capt., etc.)

"2. WIRE report to Division Manager and others per previous instructions before your tour of duty is over.

"3. WRITTEN report to immediate supervisor and others per previous instructions before your tour of duty is over.

"The information received is then transmitted to the proper Corporate officers and Governmental Agencies."

The Organization contends that the Carrier violated Rule 22 of the Agreement between the Parties by failing to establish the Claimant's guilt and by assessing him with discipline that was not warranted. The Organization maintains that the Claimant filed the report as soon as he became aware of the extent of his injury. The Organization argues that the Carrier presents no evidence that the notices of its policy regarding reporting injuries had been made known to Employees. The Organization also contends that the discipline was arbitrary, capricious and harsh.

The Carrier contends that the evidence supports its action in disciplining the Claimant because he failed to follow the procedures set forth in its Bulletins. Although the Claimant worked for several days following May 8, he did not contact any Carrier Employee until he telephoned the Carrier on May 26th. The Carrier notes that the Claimant wrote a letter on May 10 to the Local Chairman telling him about the incident on May 8th. The Carrier also points out that the Claimant did not see a Doctor until May 21st.

After a careful review of the entire record, the Board finds that the evidence fully supports the Carrier's action in disciplining the Claimant. None of the evidence provides either an explanation or an excuse for the Claimant's failure to report the alleged injury to the Carrier. Whether or not the Claimant had seen the particular Carrier Bulletins, he knew that injuries had to be reported to the Carrier; both his own testimony and his action in calling the Claims Office show that he was aware of this requirement. The fact that he wrote to the Local Chairman on May 10th, indicates that he was aware at least by then that he might have injured himself. In describing his letter to the Local Chairman he stated: "I notified him that I came in to work the following day with my back hurting". He also stated that he believed at that time that he had hurt his back carrying the boxes. He worked on May 21, the day that he saw his Doctor, yet he still did not take any action to inform the Carrier that he believed he had injured himself.

Prior Awards clearly establish that discipline by a Carrier for failure to report an injury are justified (See Fourth Division Award No. 4199, and Third Division Award Nos. 24333, 24654, 22936). This is a rule of reason which is necessary to permit the Carrier to limit its liability and to evaluate its Employees' working conditions to make them as safe as possible. Under the circumstances in this case, the Board finds that the Carrier was justified in its discipline of the Claimant. There is nothing in the record which indicates that the Carrier has acted in an arbitrary, harsh or capricious manner in the discipline which it assessed to the Claimant.

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

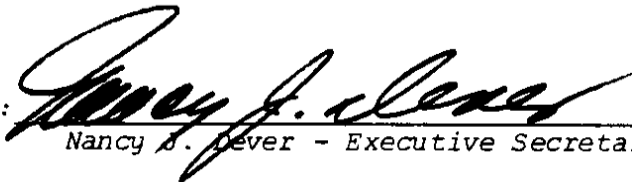
That the Agreement was not violated.

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 26th day of July 1985.