

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25969
Docket Number MW-25939

Herbert L. Marx, Jr., 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 five (5) days of suspension imposed upon Cook E. N. Hartley for alleged 'Late report of injury sustained 8/6/82' was arbitrary and on the basis of unproven charges (System Docket CR-59-D).

(2) The charge leveled against the claimant shall be removed from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was subject to an investigative hearing on August 18, 1982 based on the following charge:

"Late report of injury sustained 8/6/82,
reported 8/9/82."

Following the hearing, the Claimant was assessed a disciplinary penalty of five days' suspension.

The substance of the brief investigative hearing is contained in the two following exchanges:

"Hearing Officer: Mr. Hartley, you are being charged with late report of injury sustained on 8/6/82 and reported on 8/9/82. Are you familiar with Conrail's policy on reporting injuries?

A. You are supposed to tell someone when it occurs. At the time, I didn't feel I needed medical assistance, and even on Monday I talked to Joe and that is when I reported Wertman's injury and I told Joe at that time that I felt a pullness in my chest on Friday, the 6th but it was getting better. And that I didn't feel I needed medical; to go to the doctor and I was surprised when they called and told us both to go.

. . .

Organization Representative: Mr. Hartley, when you reported to work on 8/9/82, did you have any intention of reporting any injury for yourself?

A. no.

Q. Mr. Hartley, how in fact, did an injury get reported from you?

A. I told J. Smak. Joe is the supervisor. I told him about Mr. Wertman first, and I said I had a pulling in my chest but I was not going to do anything, it was getting better. I was surprised when Mr. Wilson called me and told me to take both of us to Holy Spirit Hospital and I said, 'Both of us?'

As to the physical examination referred to in the answer cited above, the Carrier introduced no medical findings.

It appears that the Carrier, in imposing discipline, relied entirely upon the Claimant's statement that he felt a "pullness in my chest". This is not in itself evidence that such was related to any particular activity by the Claimant or that there was any "injury". An employe's responsibility for prompt report of injury is well established, in this instance by Safety Rule 3000. To hold an employe in violation of such requirement, however, there must be some evidence of the existence of a traumatic event -- either as reported by the employe or by independent observation of others. Such is entirely lacking here.

In its Rebuttal Submission, the Carrier supplied an Accident Report Form dated August 10, 1982 allegedly signed by the Claimant. Had this been introduced at the investigative hearing, there may have been more substance to the Carrier's action. Since it was not introduced at the hearing, and the Board was not made aware that it was even referenced during the on-property claim handling procedure, the Board is foreclosed from considering it at this point.

The Carrier has failed to show that the Claimant was tardy in reporting an injury, since there was no evidence provided at the investigative hearing that there had been an injury.

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

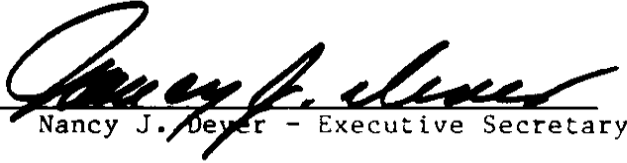
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.