

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26232
Docket Number MW-26200

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The dismissal of Trackman K. D. Williams for alleged 'failure to properly report claimed personal injury on or about August 18, 1983' was arbitrary, capricious, excessive and without just and sufficient cause (System File C-D-2038/MG-4369).

(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: In the beginning of November, 1983, Claimant reported a back injury that he had allegedly sustained on August 18 or 19, 1983. Carrier maintained that this two and a half month delay was a violation of Carrier's General Rules that require employees to report all personal injuries, however slight, before the end of the tour of duty or as soon as possible thereafter. Following an Investigation conducted on November 17, 1983, Claimant was dismissed from service effective the close of the business day on December 1, 1983.

The record of this case reveals that on October 16, 1985, Claimant entered into a Settlement Agreement with Carrier in which Claimant received \$60,500 "in full settlement and satisfaction of all claims, demands, and causes of action hereinafter mentioned...." In return, Claimant released and forever discharged Carrier from all claims, demands, and causes of action that he had or might have against it arising out of or in any way connected with personal injuries received on August 19, 1983, and on a second date. Carrier believes that the Claim is now moot and should be dismissed. With the signing of the Settlement Agreement, he waived all claims. The Organization contends that Claimant, in signing the Agreement, did not relinquish his seniority.

In this instance, we must agree with the Organization that there is no indication that the Settlement Agreement covered the issue of Claimant's discharge from service. Such an understanding must be more explicit if we are to assume that Claimant also relinquished his claim that his discharge from service was arbitrary, capricious, excessive, and without just and sufficient cause.

At the same time, however, in reviewing the record of the case, we find that there was just and sufficient cause for Carrier to determine that Claimant was guilty as charged and that he should be dismissed from service. Carrier's General Rules are clear: "Employees must report all personal injuries, regardless of how slight, to proper supervisory officer, giving full

details in duplicate on Form CJ-68 before ending tour of duty or as soon thereafter as possible." The failure to report an alleged injury of such major proportions for two months constitutes gross dereliction of duty. In light of Claimant's past discipline record, including citations under the Discipline for Absenteeism Agreement, a five-day actual and a ten-day overhead suspension, and a prior discharge from service, with a return on a leniency basis, the discipline imposed was warranted.

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 29th day of January 1987.