

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26260
Docket Number MS-26307

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Richard A. Morin
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission within thirty days of the date of this notice covering an unadjusted dispute between the Consolidated Rail Corporation (Conrail) and myself involving the question of discipline for alleged violation of Conrail's Safety Rules 2000(a) and (b) on or about August 30, 1983.

I was disqualified as a track foreman, effective October 24, 1983, after a hearing on the alleged violations; but, the disqualification was lifted in May of 1984. Conrail refused, however, to compensate me for the wage differential or loss suffered during the period of disqualification. This loss amounts to Fifteen Thousand Dollars (\$15,000.00).

I am aggrieved by Conrail's failure to compensate me for the wage loss, since the lifting of the disqualification equates to an exonerate of the charges. Further, in view of the circumstances of the injury and the type of injury there could not have been a violation of Safety Rules 3000(a) and (b) as charged by Conrail."

OPINION OF BOARD: The Claimant was advised on October 5, 1983, to attend a Hearing to determine facts and place responsibility, if any, in connection with his alleged violation of Safety Rule 3000(a) and (b) of the Carrier on August 30, 1983. This Rule reads, in pertinent part, as follows:

"Rule 3000. Injured employees must immediately:

- (a) Obtain first aid or medical attention if necessary.
- (b) Inform immediate supervisor.
When person in charge is not in immediate vicinity, inform him at earliest opportunity but not later than quitting time of the day of the occurrence."

The Hearing was held on October 5, 1983. On October 21, 1983, the Claimant was advised that he had been found guilty as charged. He was disqualified as Track Foreman as of October 24, 1983. This discipline was appealed on property by the Organization and on May 23, 1984, the disqualification was lifted by the Carrier with the proviso that the Claimant would not be compensated for any wage difference while he was disqualified. On July 2, 1984, the Claimant wrote to his Organization that he considered the lifting of the disqualification an exoneration and that he wished to further appeal the backpay issue if payment of such was not automatic as a "corollary" entitlement to his requalification as Track Foreman. This case was subsequently docketed before the Third Division of the National Railroad Adjustment Board for final adjudication.

A review of the record shows that the Claimant's immediate Supervisor, the Assistant Supervisor of Production of Carrier's New England Division, testified that despite the fact that the Claimant did not file an Injury Report until September 6, 1983, he admitted on that date that tendonitis of the right forearm was first aggravated on August 30, 1983. According to this witness, the Claimant stated that the injury occurred when he was setting "...track spikes with a three-pound spike hammer during the day" on August 30, 1983.

At the Hearing the Claimant testified that he engaged in heavy manual work on Tuesday, August 30, 1983, through Thursday, September 1, 1983, that he thought August 30th was the date he may have sustained his injury but that it did not bother him enough on September 2 through 5, 1983, "...to require medical attention". This testimony, plus that by the Assistant Supervisor of Production, clearly suggests that the Claimant was aware of pain in his forearm when he arrived for work on the morning of September 6, 1983. Even at this late date, however, he did not report this pain until several hours into this shift after he had engaged in additional manual labor. Although the Claimant testified that "he (could not) pinpoint August 30, 1983, as the actual date that caused the injury" there can be little doubt that he knew that he was feeling some effects of the tendonitis already on Wednesday and Thursday which were work days following August 30, 1983, and certainly on the weekend after that. There is sufficient evidence of record to warrant the reasonable conclusion that the Claimant did not file an Injury Report as soon as he was aware of his injury and that he waited until the tendonitis manifested itself in its most extreme form on the morning of September 6, 1983, before he filed a Report and before he sought medical attention. On merits the Claimant is guilty as charged. The Claim cannot be sustained.

The Claimant's further position that his requalification on leniency basis by the Carrier was the same as exoneration under Rule 27 of the operant Agreement is an erroneous interpretation of that contract.

On the basis of the Claimant's past record, which includes some eight (8) prior disciplines for various infractions of the Carrier's Rules, the disqualification levied by the Carrier cannot reasonably be considered to have been either arbitrary or capricious (Third Division Awards 21043, 22320 inter alia).

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

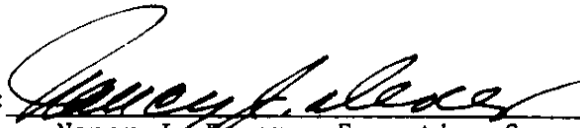
That the Agreement was not violated.

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 20th day of March 1987.