NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26663
THIRD DIVISION Docket Number MW-26920

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Section Laborer M. H. Canzanora for alleged 'failure to promptly report alleged personal injury sustained ... in September 1984' was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File D-13-85/MW 12-85).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was a Section Laborer with approximately nine years of service. After charges dated February 19, 1985, and Hearing held on March 1, 1985, Claimant was dismissed from service by letter dated March 8, 1985, for failure to promptly report a personal injury.

The record demonstrates that during September 1984, while putting in switch ties, Claimant felt a pain in his lower back and leg. According to Claimant, at the time he did not think that the pain was anything other than an ordinary muscle pull commonly experienced during the course of his duties. Claimant asserts, however, that he orally reported the occurrence to Section Foreman J. Serna. Serna testified that he did not recall Claimant having made such an oral report. According to Claimant, Serna told him to work a little harder in order to work out the pain. Claimant continued to work without loss of time until he was laid off on November 28, 1984. Claimant did not fill out a written report concerning the alleged injury.

Claimant had disc surgery on January 29, 1985. Claimant admitted that even after the surgery he did not make a written report concerning the injury. Although Claimant came to Special Agent J. L. Groves' office on January 21, 1985, complaining of back problems, the Carrier did not learn of the extent of the injury until February 13, 1985, when Carrier officials learned that Claimant was hospitalized and underwent surgery on his back. After learning that Claimant had surgery, Assistant Roadmaster R. J. Gutierrez requested that Claiamnt submit a written injury report. Claimant did not do so.

Initially, the Organization has raised several procedural issues. We have reviewed those arguments and find them to be without merit. First, we do not find that the Hearing Officer improperly expanded the charge against Claimant so as to cause prejudice. At the Hearing, the Hearing Officer read

the content of several rules. However, the charge against Claimant was specifically for failing to promptly report the injury and the evidence and ultimate conclusions were based upon the parameters of that charge. We view the charge as sufficient to put Claimant on notice that the Investigation was going to focus on the alleged violation of the requirements of Rule 1 quoted below. Second, we do not find that the Hearing Officer improperly admitted a medical report into evidence. We note that Claimant also identified the report (which indicated that Claimant suffered back problems for seven years), but even if we disregarded the report, as discussed below, there remains sufficient evidence in the record to support the Carrier's actions. Third, we find no statements made by the Hearing Officer indicating that he was not objective or impartial. Fourth (and putting aside the issue of whether this argument was raised on the property), the fact that the Carrier official rendering the decision was not the Hearing Officer is not error in this case. Nothing in the Agreement has been pointed to wherein such a procedure is required and the material facts upon which the ultimate decision was made and supported in this record are basically uncontested (i.e., Claimant admittedly did not make a written injury report).

With respect to the merits, we find substantial evidence in the record to support the Carrier's decision to impose discipline. Rule 1 provides:

> "Employes injured while on duty must make verbal report to their supervisors not later than end-of-shift or tour of duty. As soon as practicable after accident, the injured employe must make report on Form 3922. Obtain immediate first-aid and necessary medical attention for all injuries."

Claimant was clearly aware of the provisions of the Rule and had been repeatedly examined on its contents. Thus, even assuming that Claimant made an oral report to Serna concerning the injury, Rule 1 places a further specific responsibility upon Claimant. "As soon as practicable after accident, the injured employe must make report on Form 3922" [emphasis added]. Claimant never made the written report as required. We find no sufficient basis in this record for Claimant's assertion that the responsibility for making the report rested with Serna. Nor can we say that Claimant was guilty only of an error in judgment. Claimant did not merely delay in submitting the required written report until the injury manifested itself from something other than what Claimant suspected was just an ordinary muscle pull. The record demonstrates that Claimant never submitted the written report, even after surgery was performed approximately four months after the injury allegedly occurred. The Carrier was therefore justified in concluding that Rule 1 was violated.

It is well-accepted, especially on this property, that the failure to promptly report an injury as required by Rule 1 is grounds for dismissal. Third Division Awards 25162, 24014. As explained in those awards, the purpose of the reporting requirement is that the Carrier is entitled to receive such reports promptly since such incidents may involve liability on the part of the

Carrier. The reporting requirement also benefits the employee due to the obligation of the Carrier to furnish medical care to an injured employee. Third Division Award 24654; Fourth Division Award 4199. Indeed, as we stated in Third Division Award 25162, "any employee who does not comply with the accident reporting rule does so at his peril." Claimant clearly did not meet his obligations under the Rule and we can find no reason to justify disturbing the Carrier's action of dismissal.

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 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 23rd day of November 1987.