

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The discipline imposed upon B&B Mechanic R. L. Ritterbeck for alleged 'Violation of Rule 3000 paragraph B in that you failed to properly inform your immediate supervisor concerning an alleged personal injury on December 15, 1983' was arbitrary, unreasonable, on the basis of unproven charges and in violation of the Agreement (System Docket CR-884-D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant is a B&B Foreman. At the time of the incident involved in this matter, Claimant had approximately eight years of service with the Carrier. As a result of charges dated April 2, 1984, hearing eventually held on May 1, 1984, and by letter dated May 4, 1984, Claimant was dismissed from service for failing to properly inform the Carrier of a personal injury on December 15, 1983.

As a result of an on the job injury suffered to his back on July 15, 1983, Claimant performed no services for the Carrier until approximately October 24, 1983. Claimant testified that after returning to work his back continued to bother him. On December 15, 1983, Claimant was working as a Foreman on a five man bridge gang performing bridge repairs at Moxahala, Ohio. Claimant further testified that on December 15, 1983, he "had to do alot of

climbing up and down the banks" and while shoveling gravel "I reinjured my back." Claimant testified that December 15, 1983, "was just one ... of the days it bothered me the most." Claimant spoke to Supervisor Structures B. R. Anderson on December 15, 1983. According to Claimant:

"... I told Bruce on Thursday when he wanted us to work over and that I would not work because my back was bothering me again ... and that I was going to the doctor again...."

Although Claimant did not specifically describe to Anderson how he was injured, Claimant testified that "I just told him it was bothering me more and that I was going to the doctor."

Claimant worked on December 19, 1983, (his first regular work day since the December 15 incident). Bridge Inspector W. Gall testified that on or about December 20, 1983, he was acting as Supervisor Structures due to Anderson's vacation and the absence of Anderson's assistant. Gall was aware of Claimant's previous back injury. Gall testified that on or about December 20, 1983, he received a call from Claimant who stated that his back was bothering him and he was having trouble sleeping at night and that Claimant had an appointment scheduled with a doctor for the following day. The next day Gall received a call from either Claimant or his wife stating that by direction of his physician, Claimant would be taking some time off work. Gall then spoke with Carrier Supervisor Gates. According to Gall:

"I then informed Mr. Gates of the situation and he asked me if it was a new injury and I told him I was not informed of that and he said something about it being a reoccurrence and said that he would take care of it. I think I had told Mr. Gates that he had been off prior to this due to a previous injury."

According to Gall, Gates did not instruct him to complete an injury report at that time.

Anderson testified that after the July injury and prior to December 15, 1983, Claimant mentioned to him that he was still having back trouble in the form of reoccurring back pain. When asked at the hearing why he thought Claimant was not working during the period December 20, 1983, through January 20, 1984, Anderson testified that Claimant "told me that his back was hurting him. I knew that Bob had a previous back injury." Further, according to Anderson, Claimant was in his office on March 30, 1984, for the purpose of answering questions from the Carrier's Claim Department regarding the December 1983 incident. According to Anderson, Claimant stated that he injured his back at Moxahala on December 15. A form was completed concerning the incident on March 30, 1984. Anderson asked Claimant why the matter was not reported prior to that date and Claimant responded that he did not know that he had to report it and was under the impression that the injury was a reoccurrence of the previous injury.

Claimant missed work from December 20, 1983, until he was furloughed on January 20, 1984. Notwithstanding the dismissal, the Organization informs us that Claimant was returned to service on October 3, 1984.

The relevant Rule relied upon by the Carrier states:

"3000. Injured employees must immediately:

- (b) Inform immediate supervisor. When person in charge is not in immediate vicinity, inform him at earliest opportunity but not later than the quitting time of the day of the occurrence."

Considering the above facts, we are of the opinion that the Carrier has not demonstrated the existence of substantial evidence in this record to support its decision that Claimant violated Rule 3000(b). Under the circumstances of this case, Claimant did what was required under the Rule. Claimant promptly informed his immediate Supervisor Anderson of the circumstances concerning his back on the day of the incident and several days later Claimant's Acting Supervisor Gall was told that as a result of instructions from Claimant's physician, Claimant would be taking time off. The record clearly establishes that the Carrier's Officers were well clothed with knowledge concerning the condition of Claimant's back long before March 30, 1984, and knew of the fact that Claimant either reinjured or aggravated that condition on the date of the incident, December 15, 1983. They cannot now deny the same.

Second Division Award 11006 which is relied upon by the Carrier is distinguishable. In that case, the employee reinjured or aggravated an injury to his knee but failed to report that fact to his immediate supervisor until the following work day which followed two rest days and further failed to make a report notwithstanding a rule requiring the prompt reporting of "any personal injury occurring on duty." Here, the evidence shows that Claimant reported the difficulty with his back on the day the incident occurred and thus did so "not later than the quitting time of the day of the occurrence" as specified in Rule 3000(b).

The Claim shall therefore be sustained on the merits. Since the record is not clear as to whether the Carrier considered Claimant's October 1984 return to service to be on a leniency basis, we shall require that Claimant's record be corrected to delete any reference to reinstatement under such terms and Claimant's return to service shall be considered to be without loss of seniority or other rights and benefits. Further, Claimant shall be compensated for loss of wages, if any, for the time that he was considered dismissed up until the time of his October 1984 reinstatement. However, inasmuch as Claimant missed work after December 19, 1983, as a result of his back injury and was further furloughed in January 1984, the Carrier shall not be required to compensate Claimant under this award for loss of wages during those periods. However, the Carrier shall be required to compensate Claimant for the loss of wages occurring after the point that Claimant's furlough should have ended. The foregoing offset shall not affect any other monetary benefits that Claimant may have been entitled to during those periods.

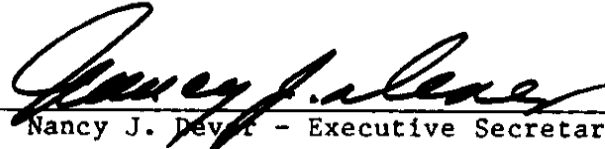
In light of the above, it is unnecessary to address the procedural arguments raised by the Organization.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.