

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(T. Y. Torgerson
PARTIES TO DISPUTE: (
(Metro-North Commuter Railroad

STATEMENT OF CLAIM: "I am hereby appealing the decision of Mr. F. T. Palmer, Supt. Admin., Metro North Comm. RR dated September 5, 1984 in the discipline case involving Twenty (20) days Suspension (deferred) (sic) of T. D. Torgerson, # 717339, Porter, Bldg. Service Dept. G C Terminal, NY, NY"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant was notified on August 13, 1984, to attend an investigation on August 22 and 23, 1984, concerning events which had occurred during his 10:00 PM - 6:30 AM shift on August 6 and 7, 1984. Following the investigations, the Claimant was sent a Notice of Discipline. He was assessed a 20 day deferred suspension because of his failure to report an alleged injury as required by Safety Rule 2601, and for falsifying a personal injury report on Form CT-226 submitted to the Dispatcher's Office on August 7, 1984. The Rule at bar is the following:

"Safety Rule 2601:

Injured employees shall immediately:

- (a) Inform immediate supervisor, even though extent of injury appears trivial.
- (b) Obtain first aid or medical attention."

According to testimony of record given by the Supervisor of the Building Services Department, he was only aware that the Claimant had a stiff shoulder, which he stated was a chronic problem with this employee, about 12:40 AM on the morning of August 6, 1984, when this employee mentioned it to him when they met briefly while both were on assignment. He was never informed of any

injury which the Claimant allegedly sustained after that until he found out about it on a report which the Claimant himself dictated to the Relief Operator in the Dispatcher's Office at approximately 2:50 AM on the morning of August 7, 1984. The Relief General Foreman stated that he was never informed of any injury sustained by the Claimant until he too was notified that the Claimant had stated such on the initial report of personal injury (CT-226) which was dictated to the Relief Operator on the day after the alleged injury took place. This report, as evidence of record shows, states explicitly that the alleged injury to the "lower back"....sustained while "...pushing a bench, so the floor could be mopped." was reported to the Foreman, and to the Supervisor of the Services Department. The Relief Operator testified that he entered information on Form CT-226 exactly as it was dictated to him over the phone.

The Claimant testified that he was not familiar with the Rule at bar. Evidence of record shows, however, that he had signed for a copy of the Carrier's General Rules which he had in his possession. Receipt of these Rules state that the employee signing it agrees that he understands that he is required to have a "thorough knowledge of and obey these Rules." Information provided in testimony by the Claimant with respect to the time of his injury, and whether he did or did not notify supervisors about it prior to calling in the initial report of personal injury, is inconsistent. At points, the Claimant's testimony is evasive. The Board must, therefore, accept as credible the corroborated testimony by Carrier witnesses as sufficient evidence to deny the claim. Issues raised by the Claimant with respect to procedural defects on the part of the Carrier are not substantiated by evidence. The Board has examined the discipline assessed by the Carrier in light of the Claimant's past disciplinary record. This includes a prior thirty day suspension, and a dismissal from service, with return on leniency basis. Arbitral precedent establishes that past records of employees can be reasonably used to determine, not the merits of a case, but the proper degree of discipline (Second Division Awards 5790, 6632; Third Division Awards 21043, 22320, 23508 inter alia). Determinations by the Carrier in this case were neither arbitrary nor capricious.

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 2nd day of March 1989.