

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28357  
Docket No. MW-28069  
90-3-87-3-622

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(CSX Transportation, Inc.  
(former Louisville and Nashville Railroad Company)

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

(1) The dismissal of Repairman W. L. Bass for alleged violation of Rules 739, G-1 and M without just and sufficient cause [System File 17 (9) (86)/12-27(86-314) Q].

(2) The claimant shall be reinstated with seniority and all other rights unimpaired 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 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.

In the facts of this case there is no dispute. Witnesses, Foreman and Claimant are all in agreement. On the afternoon of June 12, 1986, while positioning a tie under a rail, Claimant felt a distinct sharp pain in his lower back. Claimant asked his Foreman not to report the injury so that he could attempt to keep the accident from being noted on his personal record. Claimant thereafter went to a chiropractor and was informed that the injury was too serious to allow a return to work. At that time the injury became known to his supervisors. After 4:00 P.M. on June 13, 1986, a Personal Injury Report was completed by the Assistant Roadmaster.

Claimant was thereafter charged with and found guilty of violating Rule 739 pertaining to promptly reporting and furnishing a written report of an injury and Rule G-1 pertaining to dishonesty.

With respect to the instant case, Claimant was properly charged, his rights were fully protected and the transcript provides substantial evidence to support Carrier's conclusions of guilt. Claimant admits that he requested his Foreman not to report the injury. Claimant further admits he at no time filled out a Personal Injury Report. Claimant's guilt is self-admitted.

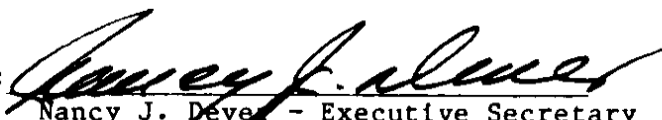
As for the discipline assessed, Carrier dismissed Claimant by letter dated August 22, 1986, for violations of the above-cited Rules. The Carrier utilized Claimant's past record in determining the quantum of discipline. Our review of that record clearly supports Carrier's judgment. Dismissal under these circumstances cannot be considered unreasonable, arbitrary or capricious. There is no proper basis for disturbing the Carrier's action in the instant case. This finding is consistent with numerous Awards of this Board (Second Division Awards 11200, 11189, 6232; Third Division Awards 26920, 26663, 26483).

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 27th day of April 1990.