

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard System Railroad)

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

(1) The Carrier's decision to reprimand and suspend Trackman M. Kersey for thirty (30) days for allegedly violating Rules 10 and 825 and his alleged failure to follow instructions of his supervisor was arbitrary and capricious, based on unproven charges and in violation of the Agreement (System File MK-9-57/12(89-988) SSY].

(2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of all the charges 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 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.

On August 8, 1989, while alighting from a camp car after the completion of his regular assignment, Claimant lost his balance and twisted an ankle. He was afforded emergency room treatment and it was determined that no break had occurred. He was told to stay off his leg for a few days. Claimant was released to return to work on August 14, 1989, and when he did not do so, Carrier sent him a letter requesting that he furnish medical reports supporting the cause of his absence. Claimant did not promptly comply with this request. Subsequently, he was given formal Investigations on two charges, one concerning a failure to follow Safety Rules when he alighted from the camp car and the other concerning a failure to follow instructions when he did not promptly submit the medical reports requested. Following the conclusion of the Investigations, he was disciplined with a reprimand and suspended for thirty days.

Examination of the Transcripts of the Investigations fails to develop that adequate evidence was introduced supporting either charge. With regard to the injury, Carrier has not established that Claimant did not use ordinary care or that he was negligent in any fashion. What the case amounts to on this charge is that Rule 10 requires that employees must watch where they step at all times and Claimant was injured, thus, he must somehow be in violation of the Rule.

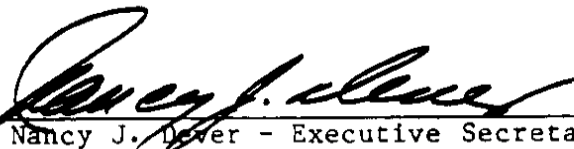
With respect to a failure to follow instructions, the Transcript indicates that Claimant did indeed attempt to contact his Supervisor (but was unsuccessful) and tell him that he had seen another doctor who had advised that he take additional time off because of the injury. After he was requested to furnish additional information, he did so as quickly as was possible under the circumstances.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.