

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29684
Docket No. MW-30669
93-3-92-3-457

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Illinois Central Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman L. C. Tapia because he allegedly '... violated Rule X of the Illinois Central Railroad Rules for Maintenance of Way and Structures when you failed to properly report your alleged injury of May 28, 1991.' , was arbitrary, warranted and excessive.
(Carrier's File 167 (MofW).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall '... be reinstated with all back pay and all other rights and benefits restored.'"

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 employee 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.

Effective September 17, 1991, Claimant was dismissed from service for failing to properly report an injury he allegedly sustained on May 28, 1991. The record discloses that Claimant first advised the Carrier he had been injured when he reported it to the Claims Department, which then notified his supervisor. Carrier's Rule X requires the immediate reporting of personal injuries suffered by employees.

According to Claimant's testimony, he thought he had aggravated a pre-existing back problem on May 28, 1991, the last day he worked before being furloughed for approximately three months. Three weeks later, Claimant sought medical attention for his back, at which time he was told this was a new injury. Claimant stated he had previously injured his back while at work, but had not reported that injury because he thought it was just a strain and it went away. He did not report this new injury until he was recalled for service.

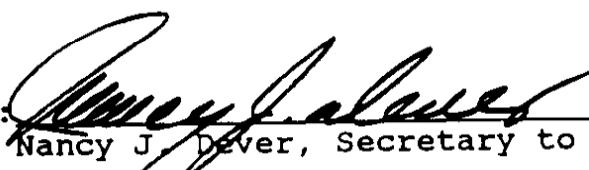
This was Claimant's fifth personal injury while at work. Three of his previous injuries required him to lose between 66 and 219 days of work. Certainly, Claimant was familiar with Carrier's requirement regarding the prompt reporting of on-duty injuries. There is no question that he failed to meet this requirement in this case. Under the circumstances, we find no basis to disturb the Carrier's decision. The disciplinary action, in light of Claimant's record and the nature of the offense, was neither arbitrary nor unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.