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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30641
Docket No. MW-29363
94-3-90-3-278

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former
(St. Louis-San Francisco Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B&B Helper R. L. Boyd on May 22, 1989 for his alleged '... failure to report personal injury May 10 thru May 18, 1989', was unjust, arbitrary, based on unproven charges and in violation of the Agreement (System File B-2303/EMWC 89-7-19B SLF).
- (2) As a consequence of the afore-cited violation, the Claimant shall have his personal record cleared of the charges and shall be compensated for all time lost between May 22 and October 20, 1989."

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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 22, 1989, the Claimant was dismissed for failing to promptly report an injury. On that same day an Investigation was requested. The Investigation was held on June 8, 1989. On June 16 his dismissal was confirmed by the Carrier in the following letter to the General Chairman:

"Refer to your file B-2303 concerning late reporting of P.I. of one Mr. Ronnie Boyd.

It is clear, through the testimony of the investigation presented that Mr. Boyd clearly is in violation of Rules 585, 586, 589, 574 and 576 of Form 15001 entitled 'BN Safety Rules.'

For this infracture, we hereby uphold the dismissal given by T. J. Smith, Manager B&B Gangs, as per Rule 574 of Form 15001 entitled 'BN Safety Rules.'"

On October 3, 1989, the Claimant was offered the opportunity for reinstatement.

The Safety Rules involved in this case are:

"574. Employees who withhold information or fail to give factual report of any irregularity, accident or violation of rules will not be retained in the service.

576. Employees must comply with instructions from proper authority.

585. All accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication. F-27 to follow to immediate supervisor, division superintendent and/or terminal or shop superintendent.

586. F-37 (Form 15016) wire report must be completed for:

a. All EMPLOYEE CASUALTIES (injuries or job related illnesses).

b. All injuries involving NON-EMPLOYEES (passengers, trespassers, non-trespassers, etc.) that DO NOT arise from an ON-TRACK RAIL EQUIPMENT ACCIDENT/ INCIDENT.

c. All other occurrences (theft, vandalism, company vehicle incidents, fires, unintentional release of hazardous material, etc.) involving damage to or loss of property NOT arising from an on-track rail equipment accident/incident.

589. An employee having any knowledge or information concerning an accident or injury to himself or others must complete Form 12504, Report of Personal Injury, in triplicate, before his tour of duty ends (or as soon thereafter as possible), supplying the information required. All copies are to be sent to the superintendent."

The record reveals that on May 18 the Claimant reported that he injured his knee on May 10. He acknowledges failing to promptly report it but seeks to excuse this failure because he didn't think it was "serious." He injured it on a Thursday, and by Tuesday of the next week, after working on his knees, it began to swell. He then reported it on the next Thursday, eight days after the original injury.

The Organization argues that employees cannot report every ache and pain. Moreover, injuries sometimes take time to manifest themselves. With this the Board agrees. However, this is not a situation where an incident occurred which was not necessarily recognizable as an injury until it later manifests itself. First of all, the Claimant was quite clear that he injured his knee at the time he did it. It "hurt," he said. He knew at the time he had an injury. He compounded his error by not reporting the injury immediately when his knee swelled. While he did not think it was serious, that is not his judgment to make. This is precisely why the Carrier has rules requiring prompt reporting. They are entitled to know when injuries occur, even if not serious, so they can make the judgment as to whether it requires medical attention and/or time off. They are entitled to make this judgment because they are usually the liable party if continued work activity aggravates the injury into something worse.

The real question here is not whether the Claimant violated the rules, but whether the disciplinary penalty is appropriate. It seems on the face of it that some five months off is a stiff penalty. However, such rule violations are extremely serious, particularly where, as in this case, the Claimant has had past experience in reporting injuries. Moreover, it is noted that discharge has often been upheld under similar circumstances. While there is mitigation in his favor, such as a good discipline record and the fact there is no evidence suggesting fraud, it is not enough to warrant reducing the discipline. The mitigation is deserving of consideration. However, to no greater extent than the leniency the Carrier showed him by offering reinstatement.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.