

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32606
Docket No. MW-33539
98-3-96-3-1107

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Maintenance of Way Repairman James H. Ossler for his alleged conduct unbecoming an employee in connection with the alleged injury he sustained on August 5, 1994 in the Canton Shops was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System Docket MW-4079D).**
- (2) Maintenance of Way Repairman James H. Ossler shall now be reinstated with seniority and all other rights unimpaired and 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 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 were given due notice of hearing thereon.

The Claimant was advised on September 18, 1995 to attend an Investigation to determine facts and place responsibility, if any, in connection with alleged unbecoming conduct when he reported off sick at 11:00 A.M. on August 5, 1994 and then claimed, some 13 months later, to have been injured on that date. The Claimant was charged with violation of Carrier's Safety Rule 60.5.

After a Hearing into these matters was held the Claimant was discharged from service of the Carrier. The Organization filed an appeal of the discipline assessed in the proper manner under Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of the appeal on property the instant claim was docketed before the Third Division of the National Railroad Adjustment Board for final adjudication.

The Rule involved in this case is Safety Rule 60.5 from the Carrier's S7-C Rule Book which states the following in pertinent part:

"2.) If you are injured, respond as follows:

b) Inform your immediate supervisor. If your immediate supervisor is not available, inform him or her as soon as possible, but not later than quitting time on the day you were injured."

The record in this case shows the following. The Claimant marked off on August 5, 1994. His time-card states that he was "sick." Further, according to the Equipment Engineer, the Claimant verbally told him that he was sick when he handed his time card in on that August day in 1994. The Claimant reported no injury at that time in accordance with Rule 60.5. That he was aware of such procedure is clear since he had, in fact, according to evidence of record in the handling of this claim on property, filed an injury report in May 1994. Some 12+ months later, on August 14, 1995, the Claimant contacted the Carrier and requested a return to duty physical. He maintained that he was returning from an on-duty injury which he allegedly had sustained on August 5, 1994.

A review of the record in this case fails to provide any evidence that the Claimant was injured on August 5, 1994. There is no documentary evidence to support this claim, nor did the Claimant say anything about any injury to his Supervisor at the time that he marked off on August 5, 1994. The Claimant filed no injury report for the date of

August 5, 1994 in accordance with Rule 60.5. The Claimant stated on his time card that he was marking off because he was sick. There was no information provided on the time-card about any injury. Witnesses who had worked with the Claimant on August 5, 1994 while he had been on duty testified at the Investigation that they knew nothing of any injury that the Claimant may have sustained on that date.

This Board, as well as Public Law Boards and Special Boards of Adjustment, have ruled on numerous occasions that failure to report an on-duty injury in accordance with a Carrier's rules and procedures is a very serious matter in this industry and can properly lead to dismissal of an employee (Third Division Awards 26663 and 26483; Special Board of Adjustment No. 1059, Award 8; Public Law Board No. 3542, Award 28 inter alia). In view of the record before it on this case the Board has no grounds for concluding otherwise but that such precedent be followed. The Claimant was in violation of Rule 60.5

A number of procedural objections were raised by the Organization in this case. The Board has studied these objections. They are dismissed for lack of evidence. The Award in this case is based on its merits.

AWARD

Claim denied.

ORDER

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 22nd day of May 1998.