

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32783
Docket No. MW-32360
98-3-95-3-208**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman W. J. Davenport for alleged violation of ' . . . Illinois Central Railroad Rules of Maintenance of Way and Structures Rule X when you failed to properly report your injury of June 20, 1994. . . . ' was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier's File 235 MofW).**
- (2) As a consequence of the above-stated violation, the Claimant shall receive the benefit of the remedy prescribed by the parties in Rule 33(i)."**

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.

This claim arose after the Claimant was dismissed from the Carrier's service after he had been found guilty of improperly reporting an injury.

On June 20, 1994, the Claimant was assigned to a gang that was installing steel ties at Tunnel 1 near Lewis Spur, Illinois. Claimant worked on Monday, June 20 and Tuesday, June 21. He did not report for work on Wednesday. On Thursday morning, after he had reported for duty, the Claimant sought permission from his Foreman to seek medical attention because he was having chest pains. He was taken to a hospital in Harrisburg, Illinois, where he was diagnosed as suffering from environmental bronchitis. Claimant was then issued a notice to appear for a formal Investigation into the charge of allegedly violating Rule X.

The Organization filed the instant claim on behalf of the Claimant contending that the Carrier failed to prove its charge that the Claimant did not properly report his personal injury.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

The Board reviewed the procedural arguments raised by the Organization and we find them to be without merit.

The Board reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to report his alleged personal injury on a timely basis. Claimant was with his Supervisor for several days prior to his reporting this incident and his excuses for not reporting his injury earlier are simply not believable.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant had been employed by the Carrier for less than one year and had already accumulated two warning letters for excessive absenteeism. Given the

seriousness of this offense and the limited seniority that had been accumulated by the Claimant, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment as a result of this incident or wrongdoing. Therefore, the claim will be denied.

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 23rd day of September 1998.