

PUBLIC LAW BOARD NUMBER 3530

Award Number: 42

Case Number: 42

PARTIES TO DISPUTE:

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of J.L. Shipley for reinstatement and for pay for time lost with vacation and seniority rights unimpaired.

FINDINGS:

This dispute involves the conduct of the Claimant, a Mason, following an injury he suffered on June 7, 1983. On November 14, 1983, the Claimant was dismissed for failing to promptly report his injury. The Organization requested a hearing which was held on December 9, 1983.

The Claimant testified that while lifting a rail on June 7, he became very dizzy, and felt a pain in his leg. He stated that he felt better after a minute and thought nothing of it. He worked on June 8 and 9, but was on vacation from June 13 to June 16. He testified that when he prepared to return to work on

June 20, his leg was very swollen. He stated that he was treated at a nearby hospital. The Claimant presented a letter from Dr. Edwards which stated that the Claimant had suffered from a blood clot in his leg, which was caused by the strain he placed on his leg on June 7.

The Claimant testified that while he was in the hospital, he contacted Mr. Hughes, a Mason Foreman, and explained that he had injured his leg while working on June 7. He admitted that he probably violated Rule 1001 by not reporting the injury immediately.

Mr. Hughes and Mr. Dean, another Mason, testified that they remembered the Claimant had stated that he felt dizzy while moving the rail on June 7. At the time, they did not think it was a serious injury. Mr. Hughes stated that he did not think it was necessary to complete an injury report for a minor complaint such as dizziness.

Mr. Clark, the Bridge and Building Supervisor, and Mr. Lambert, a Claim Agent, stated that they were not aware that the Claimant had injured himself while working until October 21, 1983. Mr. Clark stated that an injury report was not completed until November 14, 1983.

On December 27, 1983, the Carrier notified the Claimant that the decision to dismiss him had been sustained. On January 27, 1984, the Organization filed

a Claim on his behalf. After a series of appeals, the Claim was denied by Mr. Steele, Assistant Vice President - Labor Relations on July 10, 1984.

The issue in this dispute is whether the Claimant's dismissal was for just cause.

The position of the Organization is that the Claimant did inform Mr. Hughes, the Foreman, of his injury, when he stated that he was feeling dizzy. The Organization maintains that Mr. Hughes failed to carry out his responsibility and complete an injury report. The Organization also argues that the penalty of dismissal was too severe.

The position of the Carrier is that the Claimant received a fair hearing, during which it was shown that he violated Rule 1001. The Carrier argues that dismissal is justified for such a violation.

Rule 1001 provides:

Employees must report personal injuries to their immediate supervisor or the designated employee immediately in charge of the work before leaving the Company's premises...Failure to report a personal injury by the injured person or the employee in immediate charge of the work may result in disciplinary action.

Every case of personal injury, accident or damage to property must be reported as soon as possible by the quickest available means of

communication and a written report on the prescribed form rendered promptly.

The Claimant admitted that he violated Rule 1001 by failing to report the injury promptly. Therefore, some form of discipline is justified.

The Board recognizes that the Carrier needs honest employees. The Carrier should not be required to retain those employees who withhold information about an injury. The Carrier needs such information, in order to operate in a safe manner.

In this situation, there is no evidence that the Claimant deliberately tried to conceal information about his injury. It appears that he injured his leg, but was not aware of how serious the injury was until a later date. He then reported the injury to Mr. Hughes, while in the hospital.

It is the opinion of this Board that in this situation, where the Claimant honestly did not know that his injury was a severe one, that dismissal is an unreasonable penalty, despite the fact that he violated Rule 1001. The Claimant shall be reinstated.

AWARD

The Claimant shall be reinstated to his position as a Mason, with seniority unimpaired but with no pay for time lost.

Nicholas P. Pomeroy
Neutral Member

J. A. Abbott, Jr.
Carrier Member

Bryce L. Hall
Organization Member

DATE:

1/13/86