PUBLIC LAW BOARD NO. 3530

Award Number: 75
Case Number: 75

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Machine Operator D. L. Monk, Rt. 2, Box 141, New Castle, VA 24127, was dismissed on October 9, 1985 for alleged violation of Rule 1001 of the Safety Rules. Claim was filed by the Employes in accordance with Railway Labor Act and agreement provisions. Employes request reinstatement with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered Carrier's service on July 21, 1982.

By letter dated September 11, 1985, Claimant was notified to attend a formal investigation on charges that he had failed to report a personal injury allegedly incurred August 5, 1985, in violation of Rule 1001. At the formal investigation on September 27, 1985, Claimant failed to appear. He later indicated that he had car trouble, but did not notify anyone associated with either Carrier or Organization. By letter dated October 9,

1985, Claimant was dismissed based on evidence adduced at the investigation.

The question to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

On September 3, 1985, Claimant was treated for an injury to his foot by the Lewis Gale Clinic. The Clinic billed the Carrier for that treatment on September 6, 1985. Timekeeper R. L. Thompson spoke to Claimant on September 9, 1985 regarding the nature of the injury. Claimant advised Thompson that the only action he had taken that could have caused the injury was to push along a bolt machine in early August. Claimant also indicated that he was not certain of any injury sustained on August 5, but that he noticed that his foot hurt that night when in the camp cars. Thompson subsequently prepared an injury report. In early August, Claimant reported no injury. Claimant's supervisor testified that the bolt machine was not unloaded or in use on August 5, 1985.

Rule 1001 provides:

> 1001. Employees must report personal injuries to their immediate supervisor or the designated employee immediately in charge of the work before leaving the company premises. The supervisor or designated employee in immediate charge of the work is responsible for reporting all personal injuries witnessed by the supervisor or designated employee or known to the supervisor or designated employee to insure that reports will be completed and distributed promptly in accordance with Company rules.
>
> 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. Such reports must contain full details and names and addresses of all witnesses and all particulars of the occurrence.

The position of the Organization is that Claimant was dismissed without just cause. The Organization contends that Claimant did not feel or recognize immediately the injury to his foot and/or that it took time to develop. The Organization also challenges the testimony of the Carrier's witnesses that Claimant was injured on August 5, 1985, and asserts that Claimant was injured on August 3, 1985. Finally, the Organization maintains that the discipline imposed was harsh and by implication out of proportion to the alleged offense.

The position of the Carrier is that Claimant was dismissed for just cause under the Agreement in that he failed to report an injury as required by Rule 1001, and that Claimant fraudulently submitted medical bills. The Carrier contends that Rule 1001 requires immediate filing of an injury report and that, according to his own testimony, Claimant knew of his injury in August. Pointing to Claimant's supervisor's testimony as to the bolt machine's not being in use on August 5, 1985, the Carrier maintains that Claimant then fraudulently submitted medical bills because he could not have been injured on the job in the manner alleged. The Carrier maintains that the discipline imposed was warranted by the offense.

After review of the entire record, the Board finds that Claimant was

dismissed for just cause under the Agreement.

The Carrier has established through substantial, credible evidence in the record that Claimant did not submit an injury report immediately as required by Rule 1001. Based on the information Claimant later provided, he knew, at least by some date in early August, that he had sustained some sort of injury, yet he failed to report it. However, that injury could not have been incurred from a machine not in use on the day Claimant alleged he detected an injury. Directing the Lewis Gale Clinic to submit its bill to the Carrier based on those alleged injuries constituted fraudulent submission.

It is well settled that safety rules, including those regarding reporting of injuries, are essential to the smooth operation of the industrial workplace and provide for the protection and well-being of employes. Likewise, the failure to comply with this system by non-reporting or misuse is extremely serious. Based on the Carrier's evidence in the record, Claimant's offense is clear, and the Carrier's dismissal of Claimant was neither arbitrary, capricious nor discriminatory.

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AWARD

Claim denied.

Nicholas Kumas
Neutral Member

J F Miller Jr
Carrier Member

Bryce L Hall
Organization Member

Date: JUNE 12, 1989