

BEFORE PUBLIC LAW BOARD NO. 5027

Case No. 1

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI-KANSAS-
TEXAS RAILROAD)

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. Carrier violated Article 23 of the Agreement when Laborer No. 1 N. W. Roberson was dismissed from service on June 21, 1989.
2. Claim in behalf of Laborer No. 1 Roberson that his record be cleared of this matter and paid for all time lost and all rights due him be restored.

FINDINGS:

Claimant N. W. Roberson was employed by the Carrier as a laborer.

On June 6, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

. . . that you allegedly failed to properly and promptly report an alleged personal injury that allegedly occurred on May 3, 1989, at 3:30 p.m. at MP 278, Clinton Branch.

The hearing took place on June 15, 1989. On June 21, 1989, the Carrier notified the Claimant that he had been found guilty of the charges in that he violated General Rule E of the Safety, Radio and General Rules for all Employees effective April 27, 1986, on the Union Pacific Railroad and effective October 26, 1986, on the former MKT Railroad. As a result of the finding, the Claimant was assessed discipline of dismissal effective June 21, 1989.

The Organization thereafter filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier subsequently denied the Claim. The parties being unable to resolve the issues, this matter came before this Board.

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

With respect to the substantive case against the Claimant, this Board has thoroughly reviewed the record in this case and we find that the Claimant failed to properly and promptly report an alleged personal injury in violation of the rules. The record reveals that the Claimant allegedly incurred a personal injury on the job on May 3, 1989. The rules require that all accidents or personal injuries must be reported by the first means of communication. Also, a written report must follow promptly. The record reveals that the Claimant did not report his injury until June 5, 1989, more than one month after the incident.

Once this 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. This Board will not set aside a Carrier's imposition of discipline unless we find its action to be unreasonable, arbitrary, or capricious.

In the case at hand, Claimant was properly found guilty of a very serious offense. This Board recognizes that the Claimant has been with the Carrier for a number of years. However, this is the type of offense which often leads to dismissal, even for employees who have been with the Carrier for a long time. As was stated by the Third Division in Award number 26663:

It is well-accepted, especially on this property, that the failure to promptly report an injury as required by Rule 1 is grounds for dismissal. See Third Division Awards 25162, and 24014. As explained in those awards, the purpose of the reporting requirement is that the Carrier is entitled to receive such reports promptly since such incidents may involve liability on the part of the Carrier. The reporting requirement also benefits the employee due to the obligation of the Carrier to furnish medical care to an injured employee.... Claimant did not meet his obligations under the rule and we can find no reason to justify disturbing the Carrier's action of dismissal.

The Third Division's reasoning is applicable here.

Therefore, the claim will be denied.

AWARD

Claim denied.



 PETER R. MEYERS
 Neutral Member



 Carrier Member



 Organization Member

Dated: 2-24-92