B-25302

Award No. 12
Case No. 12

PUBLIC LAW BOARD NO. 5696

PARTIES TO DISPUTE: Burlington Northern Railroad

AND

Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1) The dismissal of Mr. W. C. Rembert for his alleged failure to promptly report an alleged injury was unwarranted and without just and sufficient cause.

2) As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with all right unimpaired, and the charges against him shall be expunged from his record, and he shall be compensated for all wage loss suffered.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant injured his foot knocking off anchors on July 25, 1994. His testimony was that he did not think it was so bad, and he thought that he could make it without doing anything about it and that it might get better. Furthermore, he testified "and I had been told through a previous safety meeting that if you get hurt again, was going to get pulled out of service, so I thought I could make it but it got worse." The injury apparently got worse and on July 31, on a Sunday, Claimant went to see a doctor at the emergency room at the hospital. It was after that visit that he called his foreman. He informed his foreman that he would not be at work the next day due to a doctor's appointment. However, he did not tell the foreman at that time that he was injured at work or that he was getting medical attention for an on-duty injury. It was at a subsequent call, on August 1, Monday evening, that the Claimant told his foreman that he could not come to work and he needed to fill out an accident report. It appears that the Claimant was not cleared to return to work until August 22 as a result of this injury. Subsequently, an investigation was held charging Claimant as indicated above in the claim, and he was found guilty and dismissed from service.

The Union believes that the injury in question was one which Claimant did not feel was serious enough to warrant a report. He was subsequently found to be wrong, but nevertheless, was disciplined by dismissal. The Organization relies, in part, on Rule 94 of the 1975 Agreement which indicates that employees injured

at work will not be required to make accident reports before they are given medical attention or file them as soon as practicable thereafter. Practical medical attention was supposed to be given at the earliest possible moment.

Carrier notes that the injury report was ultimately filled out on August 4. Furthermore, Claimant admitted a violation of Carrier's rules at the investigation.

This is a classic case of an employee not following the prescribed rules which have been established over a long period of time with respect to injuries. It has been held, and this Board concurs, that rule violations with respect to the reporting of injuries are extremely serious, particularly when the employee is one of long standing who has had experience with other injuries in the past. It is apparent that a Carrier is entitled to prompt reporting. In Third Division Award No. 30641, the Board held, with respect to the reporting of injuries:

> This is not a situation where an incident occurred which was not necessarily recognizable as an injury until it later manifested itself. First of all, the Claimant was quite clear that he had injured his knee at the time that he did it. It "hurt", he said. Why he did not think it was serious, that is not his judgment to make. This is precisely why the Carrier has rules requiring prompt reporting. They are entitled to know when injuries occur, even if not serious, so they can make the judgment as to whether it requires medical attention and/or time off. They're entitled to make this judgment because they are usually the liable party if continued work activity aggravates the injury into something worse.

The dispute herein is almost entirely analogous to that cited above. It is apparent in this, which may be deemed again a classic situation, that Claimant did not abide by the rules thus putting Carrier at risk. The discipline should not be disturbed.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

Carl J. Wexel
Carrier Member

E. R. Spears
Employee Member

Fort Worth, Texas
October , 1995