

PUBLIC LAW BOARD NO. 1838

Award No. 70

Case No. 70

Carrier File MW-CR-82-6

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim on behalf of P. J. Nash in which you protest his
of dismissal which was a result of formal investigation held on
Claim February 4, 1982.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was initially employed by Carrier, on January 28, 1974, as a Section Laborer. Claimant was working in that capacity on January 7, 1981, where Claimant contacted his Section Foreman L. W. Ford, and informed him that on the morning of January 8, 1981 that he wanted to be marked off sick because he had to go to a doctor. Approximately two days later Claimant Nash contacted Roadmaster L. P. Porter's office advising that he had injured his left leg and that he was seeing a doctor in Richmond. Roadmaster Porter asked Claimant at three different times in the conversation if he had hurt himself on the job to which Claimant allegedly responded that

"...he was not saying that..."

Claimant virtually disappeared from sight for approximately seven months. Carrier learned of Claimant's whereabouts sometime in April of 1981 as a result of a notice of lien from the Railroad Retirement Board to Carrier. Efforts were made to contact Claimant for several months as well as to determine if any CT-37 (Injury Report Form) had been filed. Carrier did not learn of Claimant's alleged work related injury until approximately a year after its supposed occurrence. As a result thereof under date of January 15, 1982, Claimant was sent a notice which in pertinent part read:

"You are hereby notified to report to the office of Division Engineer Maintenance E. W. Wilkinson, Division Office Building, Crew, Virginia. At 10:00 a.m., Thursday, February 4, 1982, for a formal investigation concerning alleged personal injury to yourself on January 7, 1981..."

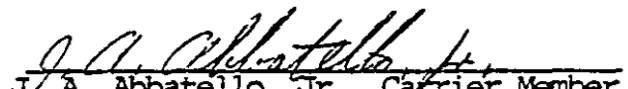
The Board finds that Claimant was ably and aggressively represented at the hearing, was afforded ample opportunity to address the charges, was afforded the opportunity, and did in fact, call witnesses on his behalf. The Board finds that there was sufficient credible evidence adduced thereat to support Carrier's conclusion. We cannot agree with Organization's contention that the hearing officer behaved in a prejudicial manner towards Claimant. There has been no showing by Organization on Claimant's behalf that Claimant was treated unfairly or prejudicially in any way. Claimant failed to make a timely report of an injury to such a degree - more than a year after its occurrence - that it virtually obliterated Carrier's opportunity to make a timely investigation into the circumstances of the alleged injury, or take any corrective action, if any were called for. See Third Division Award No. 19298 which, in pertinent part, held:

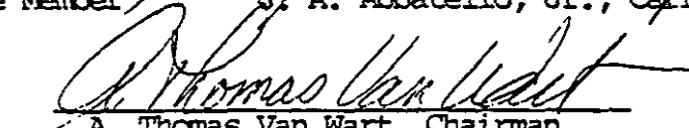
"Claimant did not report a personal injury promptly and as a result of a formal investigation was dismissed. The Board in upholding Carrier's action stated that (a) prompt reporting of injuries is important to employers (b) the employer is entitled to mitigate his damages by having the injured employee treated promptly (c) 12 days delay in reporting was in excess of a reasonable time and a violation of Carrier's rule (d) the contents of the investigation was sufficient to warrant dismissal."

In view of the circumstances of this case, we must deny the claim.

AWARD: Claim denied.


Bryce Hall, Employee Member


J. A. Abbateello, Jr., Carrier Member


A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, March 2, 1984.