

PUBLIC LAW BOARD NO. 1838

Award No. 80

Case No. 80

Carrier File MW-LP-80-11

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Former employe, L. Williams 1020 Billings St., Norfolk, Va. 23504, was dismissed account of allegedly unsatisfactory work and violation of Rule 1001 on October 27, 1981. Employees request Mr. Williams be reinstated and be paid for all lost time, his seniority, vacation and all other rights unimpaired beginning October 27, 1981.

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.

The instant claim arises from a dismissal of Claimant from all services of Carrier effective October 27, 1981. By letter, Claimant was informed, in pertinent part:

"Effective this date, you are hereby dismissed from the services of the Norfolk and Western Railway Company as a result of your overall unsatisfactory work habits and violation of Rule 1001, of the Safety Rules and Rules of General Conduct, effective March 1, 1981..."

Safety Rule 1001 reads in pertinent part:

"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. 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."

Pursuant to Article 33 of the applicable schedule, Claimant requested and was granted a hearing which was held on December 2, 1981. As a result thereof Claimant's dismissal was reaffirmed. From that dismissal Claimant appeals on the basis that Carrier's determination that Claimant failed to timely report his injury was arbitrary and capricious, not supported by the facts, and, that there was insufficient proof developed at the hearing to support Carrier's conclusion that Claimant had unsatisfactory work habits.

The hearing developed the facts that on October 22, 1981, Claimant was working as a section laborer. Sometime on the afternoon of the 22nd Claimant informed a fellow worker, Edward Walker, that he had "...hurt my back. Pulled a muscle in his back or something...".

There was some factual dispute whether or not Claimant ever worked, as alleged by him, with the rail jacks with which he assertedly injured himself. However, there is no factual dispute that Claimant did not immediately tell his supervisor about the injury. Claimant candidly admitted same, contending that he was afraid to tell his supervisor for fear that he would be summarily dismissed. On the following day,

October 23, 1981, Claimant did, in fact, report the injury to his supervisor asserting that the pain was so bad that he wished to be taken to a doctor. Claimant was relieved of his duties, taken to the supervisor's office where a CT-37 Form was made out, and then taken to a local doctor. Claimant was allegedly diagnosed as having suffered a strained muscle in his back and was given permission to return to work but in a light-duty status.

On Monday the 26th, Claimant was picked up by Carrier and brought to the Carrier's offices and assigned office duty. Sometime during the day Claimant asserted that the pain in his back was too much for him to bear, he wished to be relieved and taken home, and same occurred. On the 27th of October, 1981, Claimant was dismissed from all service of Carrier on the above stated basis.

Several supervisors were called and Claimant was described as being a "poor worker", in constant need of supervision, given to drifting off from his assignments without explanation and having no apparent interest therein. Additionally, the testimony set forth the fact that Claimant had received three reportable injuries within the last year, which was not denied by Claimant.

It was vigorously argued by Organization on Claimant's behalf that back injuries, as well as other types of injuries, often do not manifest themselves immediately; sometimes the inflammation, swelling, soreness or disability does not occur until several hours, or even a few days after the incident. The Board takes no issue with that argument. We find it somewhat specious, however, in view of Claimant's own testimony and explanation for failing to report the injury. In response to the following questions Claimant gave the following replies:

"Q. Are you familiar with Rule 1001, which Mr. Salmons read earlier?

A. Yes sir.

Q. Why wasn't this rule complied with?

A. I was just, you know, I was just trying to make it because I was scared I was scared to come in. Because he done told me that he was going to fire me if I come in with another accident. So I was trying to fight it through, you know."

Claimant was able to set forth with painstaking specificity the place, location, approximate time, names of fellow workers, equipment he was working with, and the nature of his injury. He elected not to timely report the injury for reasons of his own. Such an election was made at his peril.

Third Division Award No. 19298, 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) a prompt reporting of injuries is important to employers (b) the employer is entitled to mitigated damages by having the injured employee treated promptly and (c) twelve days delay in reporting was in excess of a reasonable time and a violation of Carrier's rules and (d) the contents of the investigation was sufficient to warrant dismissal..."

While we are ostensibly dealing with an issue of timeliness, and given other circumstances the Board might be persuaded that a one day delay was not untimely, in the face of Claimant's testimony it was a deliberate and calculated decision by him not to report the injury to his supervisor until at least the following day, thus preventing Carrier from making a timely inquiry into the circumstances surrounding the injury, taking whatever prophylactic measures were called to avoid possible injury to other employees or to dispel any dispute whether or not the injury actually occurred, as contended by Claimant, or whether

or not it occurred on the property. Claimant's explanation flies in the face of reasonableness and common sense.

It has too often been cited to require citation in support thereof that failure to timely report is, of itself, a dismissible offense. The Board notes that we are not impressed with the quality of Carrier's case concerning the second portion of the charge. We note with particularity the failure of Carrier to develop in the transcript the specific incidences of Claimant's prior injuries and the details surrounding same. However, the number of prior injuries and the time frame was virtually admitted by Claimant. Notwithstanding, that did not relieve Carrier of the burden to develop a sufficient record. Claimant's senior supervisor testified, in pertinent part:

"Q. Is Mr. Williams accident prone?

A. Kind of looks that way because he has an awful lot of accidents.

Q. Has he ever been reported or caught on safety rule violations, safety rule violations?

A. I would have to check the records on that. It seems to me like he has but I don't know. I can't recall them off hand."

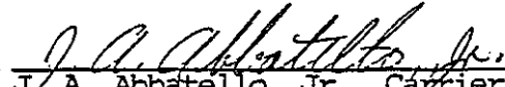
It would appear that the second portion of the charge was an afterthought; clearly, there was no adequate preparation or thorough presentation of the documentation to support Carrier's conclusions although Claimant's immediate supervisors did, in fact testify, that he was a poor worker, giving examples on unspecified dates of behavior that they characterized as "poor", "unsatisfactory" and reflecting an inadequate and indifferent attitude.

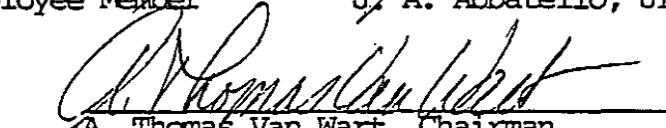
Nonetheless, as we have stated, the gravamen of Claimant's dismissal was for his failure to timely report an accident which is a

serious offense. For the reasons set forth we are impelled to conclude that the claim must be denied.

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 26, 1984.