

PUBLIC LAW BOARD NO. 2960

AWARD NO. 36

CASE NO. 60

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman Rufus Vernon for alleged failure to timely report an injury was without just and sufficient cause. (Organization's File 90-2729; Carrier's File D-11-17-396)

(2) Trackman Rufus Vernon shall be allowed the remedy prescribed in Rule 10(d).

OPINION OF THE BOARD:

This Board upon the whole record and all the evidence finds and holds that the Employees and the Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On November 25, 1981, the Claimant was directed to appear for an investigation scheduled for December 3, 1981, on the following charge.

"To determine your responsibility in connection with the injury you allegedly incurred on or about October 23, 1981, which was brought to my attention on November 23, 1981; and your failure to report this alleged injury."

The investigation, after several postponements, was held on December 29, 1981, at 10:30 a.m. The hearing commenced at 11:17 a.m. and the Claimant was not in attendance. At 11:30 a.m., the Claimant appeared at the investigation, and it was continued until January 18, 1982, and the record reflects that Mr. Vernon was not in attendance on that date. The Claimant was dismissed by a letter dated January 15, 1982. There is no question based on the record that the Claimant had proper notice of the investigation, the postponement, and the continuation.

The investigation makes clear that after having last worked on October 22, 1981, the Claimant reported to the Carrier's offices at Wood Street indicating he had a back injury. He was then sent to the Carrier's Proviso Office and spoke to Mr. R. H. Hanke, Manager of Maintenance Operations. The Claimant spoke to him about the back injury and presented the doctor's bill. According to Hanke the Claimant stated to him at this time that he received the injury at work October 23, but wasn't sure if he worked that day. Mr. Vernon then left for a doctor's appointment and later came back, but according to Hanke, was unable to fill out the appropriate forms. He was again instructed by certified letter dated November 25 to fill out the necessary accident reports in conjunction with the injury. The evidence also indicates that there was no verbal or written response regarding the injury between October 22 and the day of the investigation. Thus, based on the investigation, it is the conclusion of the Board that the Claimant failed to comply with instructions of his supervisor and the rules of the Carrier requiring reports of injuries. We must conclude that the testimony of Hanke is true as it stands without rebuttal or refutation in the record. The Claimant was given ample opportunity to defend himself against the charge and failed to do so. It has often been

stated that failure to attend an investigation is at the employee's own peril and that the Carrier has the right to proceed and discipline based on that investigation if the charges are supported by substantial evidence. In this case, they are.

The Claimant's failure to report the injury as required by the clearly promulgated rules of the Carrier and per the instructions of Mr. Hanke is a serious offense. The relevant rules are quoted as follows:

"1. When physically able to do so, employees sustaining an injury of any kind while on duty or on Company property will report the injury and cause to the immediate supervisor or person in charge before leaving the Company premises.

If emergency medical treatment of an injury is necessary after leaving company premises an immediate report will be made to the Supervisor or person in charge.

2. A report of all accidents and injuries must be sent immediately to the Superintendent by the conductor, engineer, agent, yardmaster, foreman or person in charge, by wire, using prescribed form, giving extent of injuries and the names of the owners of the property damaged and the extent of damage. As soon as possible thereafter, a full and detailed report must be made on Form 148 and forwarded to the Superintendent. (For accidents and injuries to employees not under the jurisdiction of a Division Superintendent, the person in charge must send the above reports to the supervising officer or department head.

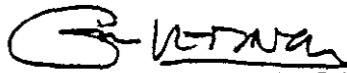
3. Injured employee must make and sign a statement of facts in relation to the accident in his own handwriting on Form 148 as soon as possible; should he be unable to write, the statement should be written at his dictation, and after being read by or to him, he shall sign it or make his mark; the person writing and reading the statement shall sign the same as witness."

These rules are reasonable because if an immediate report is not made, it is difficult for the Carrier to make an immediate investigation to determine what the extent and cause of the injury is and whether or not the injury was potentially due to Company liability. Discharge, in the railroad industry, has previously been upheld for similar offenses, particularly when they are accompanied by poor work records. In this case, it is the determination of the Board that discharge is appropriate. The Claimant's

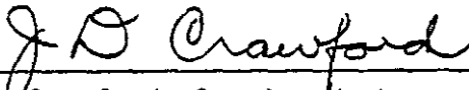
conduct was contrary to the reasonable rules of the Carrier, and his past record is less than exemplary.

AWARD

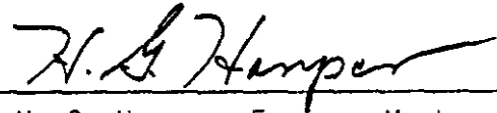
Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Dated: June 28, 1983