

PUBLIC LAW BOARD NUMBER 3530

Award Number: 19

Case Number: 19

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Laborer, C.L. Spence, P.O. Box 911, Inez, Kentucky 41224, was dismissed for allegedly failing to report personal injury. Employees request Mr. Spence be reinstated with back pay and vacation and seniority rights unimpaired.

FINDINGS:

On August 30, 1982, Claimant contacted Carrier's Claim Agent L.K. Lambert and claimed to have been injured on August 23 or 24, 1982. On October 13, 1982, Claimant was charged with failure to report a personal injury as required by Rule 1001 of Carrier's Safety Rules and Rules of General Conduct. A hearing was held in order to investigate the charge, and on the basis of the evidence adduced during the investigation Carrier determined that Claimant had violated Rule 1001 as charged and that he should be dismissed.

The Organization filed a claim protesting Carrier's actions and requesting that Claimant be returned to service with seniority and vacation rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause; and if not, what should the remedy be.

Carrier's Rule 1001 reads as follows:

1001. 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 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.

At the hearing, Claimant testified that he felt a pain in his stomach while pulling ties on the afternoon of August 23, 1982. Claimant testified further that

he mentioned the pain to his co-worker Eugene Salmons and that he asked Assistant Roadmaster Mike Conley to tell Section Foreman Leslie Conn about the injury. Claimant testified later that he telephoned Conn on the night of August 23, 1982, and informed him of the injury, and that he called Roadmaster Bill Rowe on the same night and informed Rowe's son of the injury as well.

At the time of the investigation, Conley was working elsewhere and was not called to testify. In their testimony at the hearing, Coni and Salmons denied that Claimant had mentioned anything on August 23, 1982 about having been injured on the job. Conn testified that Claimant contacted him on the evening of August 24, but stated further that Claimant had called hm only for the purpose of informing Conn that he had marked off sick. Both Roadmaster Rowe and his son, Foreman P.D. Rowe, testified that Claimant contacted them by telephone on August 24, 1982. Both emphasized, however, that Claimant had called only to inform them that he had marked off sick.

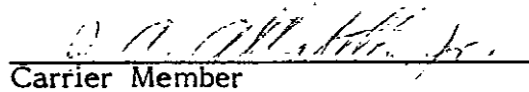
If Claimant's testimony is disregarded, it must be concluded that Claimant informed no Carrier officially of his injury on either August 23 or 24, 1982, and that he did not report his alleged injury in any manner until August 30, 1982. Claimant's testimony is not corroborated by the testimony of any of the other witnesses who appeared at the hearing. It is unlikely (and there is no evidence in the record to suggest it) that those witnesses would enter into a "conspiracy"

to testify falsely against Claimant. In addition, the uncorroborated testimony of Claimant, an accused employee, is entitled to less weight than it would normally be accorded. It must therefore be concluded that the record contains clear and convincing evidence that Claimant failed to report his injury either promptly or "before leaving the Company's premises" as is required by Rule 1001. However, Carrier has presented no evidence that Claimant has ever been disciplined in the past. For this reason, it is the opinion of this Board that the decision to dismiss Claimant for his first offense was excessive and constituted an abuse of Carrier's managerial discretion. Claimant's offense is nevertheless an extremely serious one. He shall therefore be returned to service without compensation for any time lost.

AWARD:

Carrier shall return Claimant to service in his former position immediately with full seniority but without pay for time lost.


Neutral Member


Carrier Member


Organization Member

Date: 1-25-85