

Award No. 242

Docket No. 242
Mopac File 247-6952

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute: Missouri Pacific Railroad Company

Statement
of Claim:

1. Carrier violated the effective Agreement when Trackman Donald Ragland was unjustly dismissed from service on March 21, 1985.

2. Claimant Ragland shall be reinstated to service with seniority, vacation rights, pass privileges and all other rights that would have accrued to Claimant, with pay for all wages due him from the time he was removed from service until reinstated to service.

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 January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman was called on the evening of January 6, 1985, along with other members of Gang 5266. Said Gang, headquartered in Memphis, Tennessee was to perform overtime service to repair damage to the track structure that had occurred as a result of a derailment near Memphis.

Claimant, at approximately 11:30 p.m., allegedly sustained an injury to his left shoulder. However he failed

to make a proper reporting of said injury and continued working throughout the early morning hours of January 7, 1985.

Claimant, on March 1, 1985, some fifty-three days later, filed:

"Report of All Personal Injuries and
All Crossing Accidents."

That late reporting caused the Division Engineer to issue a formal notice of charges and the holding of a formal investigation on March 13, 1985, in connection with the late charges. Carrier concluded therefrom that Claimant had failed to comply with General Rule F, Uniform Code of Safety Rules and Conditions of Employment Item No. 5. He was dismissed from service as discipline therefor.

General Rule F, Uniform Code of Safety Rules reads:

"In every case a personal injury, in any branch of the service, a full and complete report must be made at once on prescribed form. They must obtain immediate first aid and medical attention for all injuries, when necessary."

(underscoring added)

"Conditions of Employment

Item 5

To familiarize myself with and to observe all rules and regulations governing the service to which at any time I shall be assigned; to maintain strict integrity of character; to faithfully observe the rules and/or policy governing the use or possession of intoxicating liquors; and to perform my duties to the best of my ability."

The record showed that Claimant had suffered twelve injuries in six years and that he had reported them timely and properly.

He asserted that he had told his Foreman who stated that he didn't remember any such report, and, in fact, denied that he was so told.

The failure to promptly report an on-duty personal injury represents a serious breach of company rules. Such failure denies to the Carrier the right to exercise its obligation to protect other employees by promptly investigating such injury, ascertain its cause therefor and to take corrective action. Further, it also denied Carrier the opportunity to investigate the injury to permit it, if necessary, to defend itself against any potential FELA litigation.

The holdings of the Divisions are better represented by Third Division Award No. 19298 which, in part, held:

"We believe that it is common knowledge that any employee in any hazardous employment is entitled, and gets, certain benefits if the employee is injured in service, without regard to negligence or fault.

Prompt reporting of injuries, whether real, suspected, or imaginary is extremely important to the employer because:

1. The employer is entitled to mitigate his damages by having the employee treated promptly, so that an earlier return to work is possible and a valued experienced employee may return to his job.
2. The Carrier has a duty to its stockholders and to its employees to correct any condition that causes injury if such a condition may be corrected.

Prompt reporting of injuries is necessary and extremely important. It is set forth in the

rules and it is a reasonable requirement. In the matter at hand the time elapsed before reporting was twelve days. We think this is far in excess of a reasonable time."

Here, well over fifty days had passed before the incident was reported. In light of Claimant's record, which included a leniency reinstatement, the Board finds that the instant claim should be denied.

Award: Claim denied.

M. A. Christie

M. A. Christie, Employee Member

J. J. Shannon

J. J. Shannon, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 23, 1986.

