

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 184
Case No. 271

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis, Southwestern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee that:

1. Carrier violated the effective agreement when Track Laborer Hubert Hunt was unjustly dismissed.
2. Claimant Hunt shall now be reinstated to his former position as Track Laborer with pay for time lost, commencing June 14, 1982, and to run concurrently until such time as he is returned to work with vacation, seniority, and all other rights due him restored unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant had been employed by Carrier for more than ten years and was working as a Track Man at the time of his dismissal. The record indicates that on June 2, 1982, claimant was working putting cross ties in the track. In the course of this activity, he apparently injured his back but did not think much of it at the time and did not report his injury. He continued to work that day and also worked on June 3 and 4. On June 7 he contacted his Foreman and reported the injury and was unable to come to work. The record indicates that he was treated for this injury for some sixteen weeks subsequent to his report. The injury report was then dated June 7, 1982.

Carrier's rules specify that injuries occurring while an employee is on duty must be reported prior to the end of the shift in question. Since claimant

failed to comply with this rule, Carrier notified him on June 14 that he was being terminated for his failure to comply with the Carrier rule. Following a request for a hearing by the claimant and the conduct of such investigation, Carrier reaffirmed its decision to terminate claimant, triggering the claim herein.

Carrier argues that there was no question that claimant was guilty of violating its rules in not reporting his injury for five days. Carrier submits that the claimant was well aware of the Carrier's rules with respect to injuries since he had suffered several on-the-job injuries in the past. Further, he knew full well the consequences for not reporting an injury. In view of the seriousness of work-related accidents, Carrier feels that Claimant's dereliction in this instance, which was established, more than justified his dismissal.

The Organization insists that there was no violation of the rules by claimant's conduct. Specifically, Carrier charged claimant with:

"You violated Rule M when you did not report an alleged personal injury which you say occurred on June 2, 1982."

Petitioner insists that claimant did, indeed, report that accident on June 7 and therefore is not guilty of the charge placed against him. In any event, the Organization argues that the penalty of dismissal was harsh and improper under the circumstances.

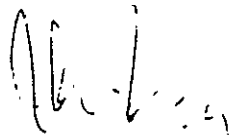
An examination of Carrier's letter dated July 22, 1982, which was relied upon by the Organization in its contention that there was only the allegation that claimant did not report his injury, leads the Board to disagree. That letter indicates specifically by quoting Rule M that personal injuries must be reported without delay prior to the completion of the tour of duty. The letter goes on, after quoting that rule, to indicate that Mr. Hunt had not reported the alleged injury which occurred on June 2. There was no argument whatsoever in the course of the entire record of this matter that the injury was reported on June 7, but the entire thrust of the Carrier's position was the tardiness in making the report. Therefore, the Board finds that there was, indeed, evidence to

support Carrier's conclusion that claimant violated Carrier's rule in not reporting the injury on June 2, which allegedly occurred on that day.

The prompt reporting of injuries is extremely important to Carriers for a variety of reasons. Most significantly, the Carrier is entitled to mitigate the possible damages occurring due to an injury by insisting on proper treatment of the employee affected on a prompt basis. In addition, any condition which causes an injury should be corrected as quickly as possible and only if it is known can this be done. Dismissal of employees for failure to report injuries promptly is quite common in the industry and on this Carrier's property, as well (see, for example, Third Division NRAB Award No. 19298). In this case, it was clear that claimant was aware that he thought he had been injured on June 2, but for a variety of unacceptable reasons did not think it necessary to report the matter until he was unable to walk on June 7. In view of his apparent violation of an important rule, Carrier's conclusion of his guilt and the penalty of dismissal appear to be warranted.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member

Carrier Member

Houston, Texas
February , 1984