

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 187

Award No. 168

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The dismissal of B&B Carpenter R. Rendon for allegedly not timely reporting a personal injury was without just and sufficient cause and capricious (Organization File 9KB-4578D; Carrier File 81-90-88).
2. The Claimant shall be reinstated with seniority and all other rights unimpaired, he shall be compensated for all wage loss suffered and have the discipline removed from his personal record.

FINDINGS

Claimant R. Rendon, a carpenter headquartered at Main Street in Evanston, Illinois, was dismissed from service when he failed to report an on-the-job injury immediately to his supervisor. The Organization submitted a claim on behalf of the Claimant seeking removal of the discipline and compensation for all time lost. The Carrier denied the claim contending that Carrier rules require that injuries that occur on-duty must be reported immediately and that the Claimant was aware of the rules.

The parties being unable to resolve this issue, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to

follow instructions by not promptly reporting a personal injury that occurred on March 26, 1990. The record reveals that the Claimant advised a supervisor that he did not report the injury on the date it occurred because "it was almost quitting time". The Claimant testified further that "...it was more or less felt like a pulled muscle".

The record is clear that the Claimant knew that all accidents and personal injuries must be promptly reported to the proper officer. The Claimant did not do that, and regardless of his excuses, he was guilty of violating the rules.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

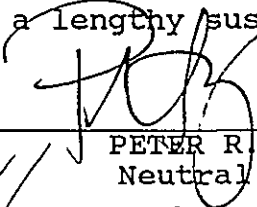
In the case at hand, the Claimant has worked for the Carrier since October of 1978. He received a five-day suspension in March of 1989 and a ten-day suspension in September of that same year. Consequently, under the Carrier's new discipline system, this third offense lead to his dismissal.

However, this Board must find that dismissal of this long-term employee for the short time that he failed to notify the Carrier of his injury, was simply too severe and unreasonable. We recognize that the Claimant did not realize that the injury was as serious as it turned out to be. That is no excuse, but it does constitute extenuating circumstances.

However, although we are returning the Claimant to work without any backpay and treating the period that he was off as a lengthy suspension, we must state that the Claimant has to realize that there are important reasons for these Rules that he violated. A Carrier must know about any potential accident or injury as soon as it happens. The possibility of fraud or additional injury is too great if employees do not abide by the reporting requirements. Hopefully this lengthy suspension will put the Claimant on notice that in the future, if he receives another sprain or an injury of any kind, he must immediately notify his supervisor.

AWARD

Claim sustained in part. The Claimant is reinstated to service but without backpay. The time that he was out from work shall be treated as a lengthy suspension.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: May 10, 1993