

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(Chesapeake & Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated Rules 37 and 48 of the Shop Crafts Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) on March 6, 1989 when it assessed a ten (10) day over-head suspension with a ninety (90) day probationary period against Carman David K. Hayes (hereinafter "claimant") for his alleged refusal to answer questions 25 - 31 on Personal Injury Form PI-1A.

2. That the Carrier violated the service rights of the claimant by failing to provide a fair hearing and procedural due process requirements of Rule 37 of the Shop Crafts Agreement by predetermining and prejudging the claimant's guilt; and further violated the provisions of Rule 38 of the Controlling Agreement by assessing unwarranted discipline against the claimant.

3. That accordingly, the Carrier be ordered to clear the record of the claimant and that the claimant be exonerated from all charges; further, that all record of the investigation and discipline be expunged from the claimant's personal file.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, as a result of an Investigation held on January 26, 1989, was assessed a ten-day overhead suspension which was outlined in letters dated March 6 and March 9, 1989, from the Carrier to the Claimant. On January 10, 1989, the Claimant apparently sustained a personal injury to his back while working at the Carrier's Raceland, Kentucky facility. The Claimant did not report this incident to his supervisor, however, the Carrier learned of it through another employee. The Carrier provided a personal injury report form to the Claimant and he was instructed to fill out the report. The Claimant was afraid that if he completed the report properly he could possibly be held from service for medical reasons. The Claimant filled out a portion of the actual report, but questions 26 through 31 were not answered. This ultimately resulted in the Investigation and discipline noted above.

The Carrier stated that the Claimant was afforded a fair and impartial Hearing to determine if he willfully chose not to properly complete the personal injury report. While there were numerous conflicts in the testimony, it is the Carrier that bears the responsibility for determining such credibility issues. The Claimant did admit that he was fearful of completing a personal injury report because of the potential ramifications. The evidence at the Investigation clearly showed that the Claimant failed to complete the personal injury report, thus violating Carrier Safety Rule 37, which is not in conflict with Agreement Rule 48 as alleged by the Organization. Therefore, the Carrier stated that the discipline of the Claimant was proper and appropriate and should be upheld by this Board.

The Organization contends that the Carrier failed to conduct a fair and impartial Hearing in violation of Rule 37 of the Agreement. In addition, the discipline assessed violates Rule 38 of that same Agreement. Also, the Organization noted that Rule 48 covers the requirements for employees making out accident reports. The Organization noted the Carrier Notice of Investigation did not charge the Claimant with any Safety Rules violations and attempted at the Investigation to change the focus of that Investigation and, therefore, justify the discipline that was rendered against this Claimant. In any event, the testimony presented by the Carrier at the Hearing does not prove its case in that several of the Carrier witnesses were testifying and basing decisions on hearsay and secondhand information. These witnesses did not make any attempt to collect all of the facts involved in the allegation of the refusal of the Claimant to fill out the personal injury report. In addition, the Carrier offered no substantial assistance to the Claimant, nor has it offered any training in the correct procedures used to complete this form, and yet the Carrier expects the employees to be proficient in filling out this form without any type of assistance to guide them through it. It is the Organization's position that the Carrier acted in a capricious and arbitrary manner and that the discipline is unjust, unwarranted and excessive against the Claimant. Therefore, the Organization asked that, since the Carrier prejudiced the record and predetermined the Claimant's guilt and the discipline as noted above is unjust, the claim be sustained in its entirety.

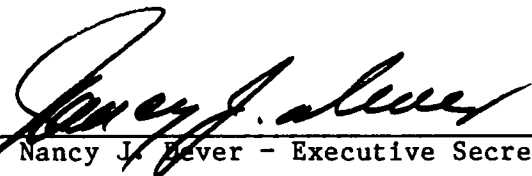
Upon complete review of the evidence, the Board finds that the Investigation does meet the standards required of the Carrier under Rule 37. The Carrier has a right to have personal injury forms completed by its employees in a proper and timely manner. These forms are necessary for the Carrier to properly assess its operations in order that they may be conducted in a safe manner to which the Organization and the Carrier would subscribe. While the record of Investigation contains some inconsistencies and clouded testimony, it is clear that the Claimant was afraid to properly fill out the personal injury report. The personal injury report was not completed and this is a relatively serious charge. The Questions contained in Sections 26 to 31 of the report are not difficult and the Claimant was supplied a sample form. The Board finds that the Carrier has not abused its discretion in this case and that, since the Claimant was given a ten-day overhead suspension, the Board has no cause to substitute its judgment for that of the Carrier's in this case and, therefore, the claim shall be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1991.