

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The sixty (60) days of suspension from service imposed upon Sectionman D. W. Couch for alleged violation of Rules A, B, E and 4004 of Form 7908 was arbitrary, on the basis of unproven charges and in violation of the Agreement (Carrier's File 870929G).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be allowed compensation for all wage loss suffered between September 3, 1987 and October 31, 1987."

FINDINGS:

The Third 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.

Claimant is a sectionman with seniority dating from April 1, 1974. After charges dated August 3, 1987, and a Hearing held on August 17, 1987, Claimant was suspended for sixty (60) days by letter dated September 3, 1987, for failure to report an injury in timely fashion, in violation of Rules A, B, D and 4004 of Form 7908. Claimant was working under the Supervision of a Roadmaster and a Gang Foreman when the incident involved here occurred.

On August 3, 1987, Claimant was notified by the Roadmaster to:

"Report to Roadmaster's Office, East 4315 Sprague Avenue, Spokane, Washington at 10:00 a.m. Thursday, August 6, 1987 for investigation and hearing to develop facts and place responsibility in connection with your report of alleged on-duty personal injury occurring at Moscow, Idaho on July 27, 1987, reported by you on July 30, 1987, subject of investigation to include the possible falsification of alleged injury and possible late reporting of such injury, indicating possible violation of General Rules A, B, and E and Rules 607, 621 and 4004 of Form 7908, Safety, Radio and General Rules for all Employees effective April 28, 1985, as revised April 27, 1986."

The Investigation was held on August 17, 1987. On September 3, 1987, the Hearing Officer concluded that the evidence was not sufficient to sustain the charge that Claimant falsified an injury. The Hearing Officer further concluded as follows:

"I do, however, feel that the alleged personal injury was not reported in a timely manner. By your own testimony, you knew you were injured on Monday, July 27, 1987, yet you failed to take any of several opportunities to notify your Foreman or Roadmaster Angel until Thursday, July 30, 1987. I therefore, find you in violation of Rules A, B, E and 4004 of Form 7908."

Claimant argues that he did not receive a fair and impartial Hearing, that the Carrier failed to prove its charges on which the discipline was based, and that the discipline imposed on Claimant was arbitrary, capricious and unreasonable.

The Carrier argues that the Organization's allegations of procedural defects are without merit, that the Carrier proved Claimant guilty of the offense set forth in the letter of discipline, and that the seriousness of Claimant's offense fully supports the discipline imposed.

This Board finds the Claim to be without merit. As to the procedural allegations, the Organization asserts that the August 3, 1987 charge did not apprise Claimant of "the precise nature of the charge(s)", as required by Rule 48(c). The Board agrees with the Carrier that the charge met this requirement, since it informed Claimant that the "subject of investigation [is] to include the possible falsification of alleged injury and possible late reporting of such injury." (Emphasis added). The charge also identified the date and place of the injury, and the date on which it was reported by Claimant. The charge in this case thus "reasonably appris[ed] [the] employee of what set

of facts or circumstances are under inquiry so that he will not be surprised and can prepare a defense." Third Division Award 17998. This Board thus concludes that the charge made Claimant aware that this incident would be investigated, and that there was no procedural violation.

This Board has further determined that the Hearing Officer did not commit a procedural error in including Claimant's discipline record as an exhibit in the Investigation Transcript. The Hearing Officer stated at that time that the discipline record would only be used to determine the amount of discipline, and would not be used in determining whether the employee had committed the infractions with which he was charged. The record supports a conclusion that the Hearing Officer only utilized the discipline record in the manner stated at the Hearing, and therefore no procedural error was committed.

With respect to the merits, the Board finds substantial evidence in the record to support the Carrier's decision to impose discipline. Claimant testified that at approximately 2:00 P.M. on July 27, 1987, he was lifting cross ties that were nine (9) feet in length, and that he felt a "pull" in his back as he took a step. Claimant further testified that he was not aware that he had been injured, and that he was able to perform normal activities during the remainder of his tour of duty. According to Claimant, the injury did not manifest itself until several hours following the incident. Claimant testified that he therefore did not report the injury on July 27, 1987. It is undisputed that Claimant did not report the injury until July 30, 1987.

The Hearing Officer determined that the Carrier did not prove that Claimant falsified his report of the injury. The Board must accept this finding, which the Carrier did not appeal. However, the Hearing Officer further concluded that Claimant had violated Rules A, B, and E and 4004 of Form 7908 by not reporting the injury in a timely manner. General Rule E provides as follows:

"Accidents, personal injuries, defects in track, bridges or signals, or any unusual condition which may affect the safe and efficient operation of the railroad must be reported by the first means of communication. Written report must follow promptly when required." (Emphasis added).

Rule 4004 requires that "[a]ll cases of personal injury while on duty or on company property must be reported to proper authority on prescribed form."

Claimant testified that he called the Carrier on July 28, 1987, the day after the injury, to tell the Roadmaster he would not report for duty. The testimony of the two men was completely at odds as to whether Claimant told the Roadmaster that he was injured in that conversation, and thus whether Claimant fulfilled the requirements of General Rule E and Rule 4004. The Roadmaster testified that Claimant told him he had gotten drunk the previous evening and could not come to work. He further stated that Claimant gave no

indication that he had injured himself at work on the prior day. Claimant contended at the Hearing that he did not tell the Roadmaster on July 28 that he was hung over. Claimant also testified that he was not able to mention his injury to the Roadmaster, because the Roadmaster "hung up before I got off the phone. As a matter of fact, I wanted to kind of talk to him that day, and he just hung up."

However, Claimant also admitted that he told the Roadmaster on July 28 that Claimant had been drinking the night before. In addition, when the Roadmaster was recalled as a witness, he denied that he had hung up on Claimant. He also reiterated that Claimant had said that he had been drinking on the previous night and was all fucked up and unable to come to work. The Roadmaster had previously testified that Claimant could have reached him at his home on the evening of July 27, 1987.

Claimant did not report to work on the following day, July 29, and did not call in to report his absence. The Roadmaster testified that when Claimant finally contacted the Roadmaster on Thursday, July 30, Claimant told him that he did not report to work on July 29 because he was hung over from drinking the prior night.

The Hearing Officer heard the testimony of both men, and observed their demeanor. The Board will not disturb his ultimate conclusion that Claimant did not report the July 27 injury "by the first means of communication." That conclusion must have been premised on the Hearing Officer's determination that the Roadmaster's testimony was more credible than that of Claimant. Third Division Awards 27971 and 25102.

There is therefore substantial evidence in the record that Claimant did not promptly report his injury, as required. Third Division Awards 27971, 25162, 25157, 25133, 25102. There is also substantial evidence in the record to support the penalty imposed by the Hearing Officer. Claimant had been suspended on two prior occasions for being AWOL or absent from duty, and had been previously dismissed for being AWOL.

Contrary to the argument of the Organization, this Board does not find any mitigating circumstances to excuse Claimant's failure to promptly report his injury. As the Carrier convincingly argues, Claimant's failure to inform the Carrier in a timely manner is a serious breach of the Rules. Such Safety Rules ensure that injured employees will receive prompt medical attention and that they will not aggravate the injury. These Rules also allow the Carrier to immediately investigate the incident causing the injury, and to protect itself against fraudulent Claims. Third Division Award 25133. While Claimant's claim in this case that he had been injured, was determined to be valid, the reasons for prompt reporting still remain, and require discipline. This is particularly true when the evidence demonstrates that Claimant did not report the injury in a timely manner because he had been drinking the previous night.

Therefore, this Board concludes that there is sufficient substantial evidence in the record from which to conclude that Claimant violated Rules E and 4004 as charged. Because of the need to promptly report such injuries, the Board cannot conclude that the sixty (60) day suspension was so excessive as to be arbitrary, unreasonable or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bevers - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.