

The Fourth Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(The American Railway and Airway Supervisors Association:
(A Division of TCU

PARTIES TO DISPUTE: (

(Norfolk Southern Railway Company

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Addendum No. 4 when they assessed the discipline of Sixty (60) days actual suspension to Mr. G. J. Zoerner, Foreman, Asheville, North Carolina following hearing held in connection with the alleged violation of Safety Rule 1000. Said discipline is unjust, unwarranted and an abuse of Carrier's discretion.
2. Because of this violative action, Carrier be required to make Claimant whole for any and all monies lost by Mr. Zoerner due to this incident and his record be cleared of all reference to the charges.

FINDINGS:

The Fourth 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 was employed by Carrier as a Roundhouse Foreman at Asheville, North Carolina. The record in this case indicates that on August 16, 1989, Claimant obtained medical attention for an alleged on-duty injury which allegedly occurred on August 15, 1989. Carrier contends that the first indication it had relative to this alleged on-duty injury was received on November 21, 1989. Claimant argued that his General Foreman was aware of the alleged injury at the time of its occurrence. The General Foreman denied any knowledge of the alleged injury. There is no record in the case file to support the argument that the injury was reported at the time of its occurrence.

By notice dated December 12, 1989, Claimant was instructed to report on December 20, 1989, for an Investigation in connection with (1) an alleged failure to comply with General Safety Rule 1000, and (2) an alleged conflict of statements relative to the injury allegedly sustained on August 15, 1989. After an agreed-upon postponement, the Investigation was held on January 9, 1990, at which time Claimant was present, was represented and testified on his own behalf. Following the completion of the Investigation, Claimant was informed by letter dated January 29, 1990, that he was, as a result of the Investigation, assessed a sixty day suspension. The suspension was served from February 3 to and including April 3, 1990. Subsequent appeals on Claimant's behalf were handled in the usual manner on the property and, failing to reach a satisfactory resolution thereof, the case has come to this Board for final and binding adjudication.

Our review of the record as developed during the on-property handling of this case reveals that Claimant has been accorded all of the due process rights to which he was entitled under the terms of the negotiated Agreement. The Hearing record, which is the primary evidentiary document in a discipline proceeding, contains more than substantial probative evidence to support the charges as made in this case. The absolute right of a Carrier to demand and to receive prompt reporting of all accidents which occur on its property is so well established that we need not recite again the litany of precedential Awards in this regard. In Award 81 of Public Law Board No. 2971, the Board stated:

"Many Boards have found that the mere failure to file a report in a timely fashion is a serious violation of the rules, much less the filing of a fraudulent claim, as was the case here. The Carrier's discipline of dismissal, under the circumstances, was hardly unreasonable in consideration of the seriousness of the offense. The claim must be denied."

That logic is sound and equally applicable in this case.


Claimant in this case violated Rule 1000. The assessment of a sixty day suspension was lenient rather than arbitrary or excessive. The claim for removal of the discipline is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.