

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist J. E. Brownfield to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist J. E. Brownfield be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-2(e) of the prevailing Agreement which was effective April 1, 1976.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, a machinist, had been employed by the carrier and its predecessor corporations since 1961. On October 16, 1978, the carrier discharged the claimant as a result of an investigation held on August 14, 1978 and September 11, 1978. Claimant was charged with fraud and deceit in connection with his submission of a false injury report to the carrier on February 25, 1975.

There is a material factual dispute in this case. The organization argues that the carrier has failed to present substantial evidence supporting the charge. According to the claimant, he was involved in two separate accidents. The first occurred away from the workplace on February 22, 1975 and involved a collision between an automobile and a tractor. The second, an on the job accident, occurred on February 24, 1975 resulting in separate injuries which was verified by the carrier. The carrier contends the record is replete with substantial evidence proving the charge. To demonstrate that the second accident was either a fabrication or, at least, did not result in any injury, the carrier relies on two depositions given by the claimant which, according to the carrier, contain

testimony that the claimant's injuries were solely due to the tractor accident. So, the carrier argues, since the claimant was not injured on February 24, 1975; the injury report he filed on February 25, 1975 was false.

Initially, the organization has challenged the impartiality of the hearing officer. We have carefully examined the transcript and we must conclude that the hearing was conducted in an equitable fashion. The hearing officer gave claimant's representatives ample opportunity to question all witnesses. Further, the hearing officer granted a continuance to permit the claimant and his representatives to examine the evidence and prepare a defense. There was no defect in the hearing process.

When this Board is asked to review a record containing factual controversies, we are limited to determining whether there was substantial evidence in the record to support the charge. Second Division Award 7492 (O'Brien). If the carrier has proffered substantial evidence that the claimant falsified an injury report on February 25, 1975, the carrier may properly conclude discharge is the proper penalty. Second Division Award 7738 (Roadley).

Applying those propositions to this claim, the claimant gave contradictory deposition testimony under oath in two court cases. In the first case, arising out of the auto-tractor mishap, the claimant testified, on September 20, 1975, that he had suffered five cracked ribs and a shoulder separation. In the second case which was brought by the claimant against the carrier for alleged injuries on February 24, 1975, the claimant testified that because of the shop accident, he sustained five cracked ribs and a cracked shoulder. The claimant's inconsistent statements constitute substantial evidence to support the charge. The injuries claimed are identical, yet, the alleged accidents were only two days apart. Since there were no witnesses to the purported shop accident, the carrier could reasonably conclude that the accident never occurred. Though the Accident Investigation Committee verified that the claimant had been injured, the committee's only knowledge concerning the cause of his injuries was the claimant's own representations. Because the claimant's own inconsistent deposition testimony impeaches his credibility, the Accident Committee's verification of the accident based exclusively on the claimant's representations is also impeached. Thus, the record manifests substantial evidence that the claimant filed a false injury report on February 25, 1975.

This Board must expressly declare that it has confined its determination solely to the charge that the claimant falsified an injury report. We have not stated and we do not imply that the claimant committed perjury or any other criminal offense during the course of events herein. We have not considered, in deciding this claim, the comments made (on June 29, 1978) by the district judge presiding in the litigation between the claimant and the carrier inasmuch as those comments appear to be his personal opinion.

A W A R D

Claim denied.

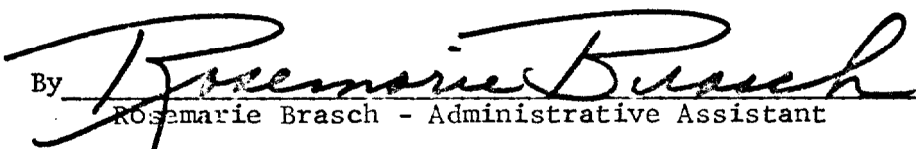
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Award No. 8524
Docket No. 8555
2-CR-MA-'80

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois this 3rd day of December, 1980.