

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Helper Kleith Hunter was unjustly treated when he was dismissed from service on July 9, 1979, following investigation for alleged violation of a portion of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on March 28, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Restore Electrician Helper Kleith Hunter to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital, medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent (6%) per annum.

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 employe 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.

On April 2, 1979, the Carrier notified Claimant that it was convening an investigation to determine if he violated Rule 801 when he allegedly filed a personal injury report even though he had not suffered any on-duty injury. The investigation, which was originally scheduled for April 18, 1979, was postponed twice at the Organization's request. At the commencement of the investigation on June 20, 1979, the Organization requested another postponement. The Carrier's hearing officer denied the request over the Organization's objection. Claimant did not appear at the investigation.

The Electrical Supervisor, General Foreman and Assistant Plant Manager gave the following account of Claimant's activities on March 27 and 28, 1979. During the third shift on March 27, Claimant complained of back pains. Claimant was

sent to the hospital for an examination. At no point during this shift did Claimant suggest that he had suffered any type of job related accident. The next evening after Claimant reported to his regular third trick assignment, Claimant suddenly told his supervisor he wanted to complete a personal injury report. Claimant related (for the first time) that he had accidentally injured his back during the previous shift (before he went to the hospital). Later, Claimant purportedly recanted his prior assertion that he had incurred an injury on March 27. Instead, Claimant's back pain apparently resulted from an injury he had sustained several months before this incident. Claimant, however, still insisted on filing a personal injury report showing he had accidentally suffered an injury because, on the preceding evening, the doctor had told him not to work for at least two weeks. Claimant also allegedly admitted that he was filing the personal injury report solely to insure that he would be compensated for the period he would be unable to work. Though the Assistant Plant Manager warned Claimant that his actions were not legitimate, Claimant completed and filed a personal injury report claiming he had incurred an on-duty injury on March 27, 1979.

The Organization initially argues that the Carrier arbitrarily rejected its request to postpone the hearing on June 20, 1979. According to the Organization, Claimant's physical disability prevented him from attending the investigation and, therefore, he was improperly deprived of his right to confront and cross-examine Carrier witnesses. The Carrier contends it had already granted the two long postponements and there was no evidence to support a finding that Claimant was physically unable to appear.

In deciding whether the Carrier's denial of the Organization's request to postpone the investigation undermines Claimant's due process rights contained in Rule 38 of the Controlling Agreement, this Board must consider all the surrounding circumstances on a case by case basis. After carefully examining the record, we conclude the Carrier's denial did not prejudice Claimant's rights. Claimant had already been given two opportunities to appear. Though Claimant's doctor said he was totally disabled until May 21, 1979, there is no evidence demonstrating Claimant was incapable of attending the June 20, 1979 investigation. In spite of receiving proper notice, Claimant failed to either contact the Carrier prior to the June 20, 1979 hearing, or appear at the investigation.

Turning to the merits, we conclude that the Carrier proved that Claimant committed the charged offense. If Claimant had suffered a personal injury on March 27, 1979, he should have said so immediately. By completing the personal injury form the next day, Claimant dishonestly attempted to report an injury which, in fact, had not occurred.

Due to the seriousness of Claimant's misconduct, we must uphold the discipline.

A W A R D


Claim denied.

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Award No. 9432
Docket No. 9088
2-SPT-EW-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of March, 1983.