

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering 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 M. C. Stroud was unjustly treated when his discipline record was assessed thirty (30) demerits on June 25, 1980, following formal investigation for alleged violation of portion of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on April 26, 1980.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
  - (a) Rescind the thirty (30) demerits assessed Electrician M. C. Stroud's discipline record.

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.

Claimant, M. C. Stroud, a 9 year electrician, was assessed 30 demerits for his responsibility in connection with a charge of "dishonesty of claiming an injury while on duty on April 26, 1980".

The record shows that on the Friday night in question claimant was on the midnight to 8 a.m. shift. The alleged injury occurred while attempting to break a nut on a #3 brush holder. Another employe, J. Almanza, was assisting claimant at the time and was unaware of any accident or injury. Supervisor D. Jones noticed claimant limping shortly thereafter and asked about it, to which claimant replied that he had a groin pull. Sometime that evening claimant told Jones he wanted to lay off because he intended to drive a race car on Saturday night and again on Sunday and that if he didn't return following his rest days he would be off sick.

On either May 2nd or May 5th claimant came in for disability forms and stated he had a strain. General Foreman Palmiter testified that he asked claimant where it happened and claimant then said he didn't know. At any rate he did not indicate at this point that he had suffered an on-the-job injury. On May 7th claimant came in with his Union representative, Mr. McCurdy, and alleged for the first time that his disability had been caused by an accident at work on April 26th. After this meeting the Carrier contacted other employees on that shift to determine whether anyone had seen the alleged accident. On May 14, 1980 claimant was notified of the charges and requested to appear for a hearing on May 20th. At the request of the General Chairman the investigation was postponed until June 3rd. In the meanwhile claimant obtained a letter from his doctor (dated May 30th) stating that he had been seen a month earlier on April 30th in connection with pain in his lower back and down his right leg. The doctor says he recalls that it was claimed that the injury occurred at work -- if indeed this is so (that he and claimant arrived at this conclusion on April 30th) it is curious that claimant did not so state when he picked up the disability forms rather than telling Foreman Palmiter that he didn't know where it happened.

After the investigatory hearing Carrier concluded that claimant's failure to report any injury on the night it allegedly occurred, his statement when getting disability forms that he didn't know where it happened, and the fact that other employees working with or near him had no knowledge of any accident or injury, as well as the fact that he drove a race car for 2 days immediately afterwards, all add up to a showing that his belated claim is not credible and the 30 demerits assessed for dishonesty were a lenient penalty for what is normally a dischargeable offense.

Petitioner urges that Carrier has failed to prove the charge of dishonesty and that the record does not support the assessment of 30 demerits. Petitioner notes that the record shows that claimant was not limping when he started work on April 26th, but that he was limping according to Carrier's own witness, Supervisor Jones, after 3:30 a.m.

The Board is not satisfied that the record either exonerates claimant or proves his guilt. Certainly on-the-job injuries should be reported immediately. Claims of such injuries first made many days after the fact are open to doubt and require substantiation. While it is not unreasonable that an employee may ignore what appears to be a minor matter of a muscle pull until the pain continues for several days, it is unreasonable that after he has seen a doctor and concluded that it is more serious than he originally thought, and that it indeed stems from an injury at work, that he would neglect to make these facts known to the Company at the earliest opportunity.

In this case claimant had been under treatment for a groin pull for the preceeding 12 months and the fact that he was limping at 2:30 a.m. on the 26th is not necessarily proof of some new injury. On the other hand, the limping is not inconsistent with a new injury, and Carrier's evidence falls short of conclusively proving that claimant was not in fact injured as he claims.

If claimant wanted his disability treated as an on-the-job injury he had the burden of substantiating his belated assertion on that point. A doctor's letter

a month after he was seen recalling conclusions which are inconsistent with claimant's failure to advise the Company of the alleged accident when picking up disability forms, is not particularly persuasive. The Board does not disagree with Carrier's refusal to accept the claim of on-the-job injury in this case. The charge of dishonesty, however, requires that the Carrier bear the burden of proof and show by substantial evidence that claimant intentionally attempted to deceive the Company.

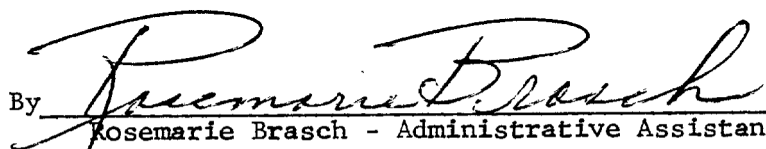
In spite of Carrier's suspicions with reference to claimant's racing activities, it is nevertheless possible that one might initially ignore a muscle pull thinking it would soon be better, and not report it until some later time when the pain still persists. The fact that he was observed limping at 2:30 a.m. is not inconsistent with his attribution of the injury to the job he had been performing. Although he was involved in other activities which might equally have caused the injury prior to seeing his doctor, this does not prove that he was wrong about the source of his problem or that he intentionally attempted to deceive the Company. The charge of dishonesty simply cannot be sustained upon such inconclusive evidence and the 30 demerits assessed against him must be rescinded in favor of a warning that alleged accidents be reported in a timely fashion so that in the future there can be no question as to the honesty of such assertions.

A W A R D

Claim sustained in accordance with the findings.

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 15th day of June, 1983.