

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(CSX Transportation Inc. (SCL)

STATEMENT OF CLAIM:

1. That the CSX Transportation, Inc. (SCL) violated the controlling Agreement, in particular Rule 32, when Electrician Apprentice G. K. Harris was unjustly dismissed from service effective October 10, 1985 as a result of formal investigation held September 11, 1985 at Hialeah, Florida.

2. That accordingly the CSX Transportation, Inc. (SCL) compensate Electrician Apprentice G. K. Harris in the amount of eight (8) hours pay per day at the pro rata rate from the date of October 10, 1985 when Carrier dismissed Mr. Harris from service until the date Mr. Harris is allowed to return to service both dates inclusive and all other rights that accrue to his position at Hialeah, Florida.

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 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.

On August 25, 1985, the Claimant experienced neck, shoulder, and arm pain. He was driven to the Miami Shores Hospital Emergency Department by a relative, where he was examined by a Doctor. The physician x-rayed his cervical and thoracic spine and concluded that the Claimant was suffering from neck and upper back muscle strain. The Doctor prescribed a muscle relaxant and recommended that the Claimant stay home from work for a day or two if the pain persisted. On August 26, 1985, the Claimant phoned the General Foreman advising him that he was unable to report to work due to a muscle injury. According to the General Foreman during that conversation the Claimant told him that he was unsure if the injury had been sustained on August 22, 1985, while connecting 480 volt cables in a locomotive. However, the Claimant testified that he told the General Foreman that he had sustained the injury on the job that day.

On August 27, 1985, the Claimant returned to work and, according to his Supervisor stated that he had injured himself while on duty on August 22, 1985. He was ordered to report to the Foreman's office and await further instructions. He filled out an Accident Report, but declined to signify that he had refused medical treatment for his on-the-job injury. The Claimant was then escorted by the General Foreman to the Company doctor for an examination. That physician cleared him to return to work.

Alleging that the Claimant had given contradictory reports on the source of his injury, the Carrier charged him with violating the section of Rule 3 of the Seaboard System Railroad Rules and Regulations of the Mechanical Department which reads, "...dishonesty...making false statements or concealing the facts concerning matters under investigation will subject the offender to dismissal." An investigation was held, and the Claimant was found guilty as charged and dismissed on October 10, 1985. On November 22, 1985, the Organization filed a complaint that the Claimant had been improperly disciplined as he had not been afforded a fair and impartial investigation. This Claim was denied by the Carrier's Superintendent at Hialeah, Florida, on December 11, 1985.


In the testimony presented before this Board there appears to be some disagreement as to what was said during the telephone conversation between the Claimant and the General Foreman on August 26, 1985. However, the Medical Report from the Emergency Department of Miami Shores Hospital clearly established that the Claimant was seen on August 27, 1985, by the Doctor, and that x-rays revealed that the Claimant was suffering from muscle strain in the neck and upper back. That evidence, in itself, is sufficient to substantiate the credibility of the Claimant's testimony in regard to his injury. Whether that injury was job-related is not an issue before this Board. The facts in the case, therefore, do not support the Carrier's charge against the Claimant. He is to be reinstated to his former position and to be made whole for all lost wages and benefits as provided for in the schedule agreements.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Over - Executive Secretary

Dated at Chicago, Illinois this 20th day of January 1988.