

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 11764
Docket No. 11621
89-2-88-2-105

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer A. Spears, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company effective November 12, 1987.

2. That accordingly, Chicago and Northwestern Transportation Company be ordered to make Mr. Spears whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service, reimbursement of all lump sum payments contained in the National Agreement dated November 26, 1986, and the mark removed from his 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 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 were given due notice of hearing thereon.

The basic facts of this case are set forth as follows. Claimant was employed as a Laborer for the Chicago and Northwestern Transportation Company. He was first hired by said Carrier on August 20, 1977. On October 28, 1987, Claimant had reported to two Carrier Foremen that he had stepped into a hole while getting soap and advised that it should be checked before someone was injured. This was about 6:50 P.M. Based on the developments that immediately followed this notification, Claimant later allegedly refused to complete a Carrier prescribed injury report (Form 148) and allegedly left the property without official permission. Carrier contended that he informed the General Foreman that he twisted his left leg, while Claimant denied this representation. An Investigation was held on November 4, 1987 to determine whether he

committed several disciplinary infractions and subsequently thereafter he was dismissed from service, effective November 12, 1987.

In defense of his petition to the Board, Claimant contended that he never apprised the Foremen that he was injured when he stepped into the hole and disclaimed that he informed them he twisted his leg. He also denied that he was limping when he and one of the Foremen went to inspect the hole and disclaimed that he was asked to complete the injury report. Furthermore, he maintained that he did not leave the property without permission, since the General Foreman handed him his time card. His reason for reporting off work was that he was sick with a cold.

Contrawise, Carrier asserted that Claimant clearly informed the General Foreman that he twisted his left leg when he stepped into the hole, and moreover, refused to complete the injury report. It also charged that he had not been given permission to leave the property. It maintained that the Investigative record fully demonstrated that he was insubordinate, when he refused to complete the report and absent without permission when he left the property without proper authorization.

In considering this case, specifically the details of the Investigative record, the Board finds sufficient credible evidence to support Carrier's position. Essentially, we find a testimonial consistency among Carrier's witnesses. To be sure, there is a difference of perspective as to precisely when Claimant first reported the hole, but this divergency does not affect the ultimate tenability of Carrier's position. There are no indications that either Foremen had a personal animus toward Claimant and no indications that either man had a rationale for fabricating false charges. Even assuming arguendo, that Claimant's version of events was correct, there would be no logical motive to proffer charges. It would be an implausible move on the part of Carrier's officials. The record does show that Claimant's past employment history was replete with on property injuries and, as such, a concern for administrative protocol would not be unorthodox under these circumstances.

On the other hand, recognizing that Claimant first brought the existence of a potential safety hazard to his foremen and recognizing that his intentions were basically constructive, we believe, notwithstanding a prior record of discipline, that the dismissal warrants modification. Accordingly, we will reinstate him to service without backpay on a last chance basis with the added understanding that he is expected to comply with all Carrier rules, regulations, directives and Supervisory instructions. In other words, Claimant cannot decide at his convenience, whether or not he will comply with Carrier orders.

A W A R D

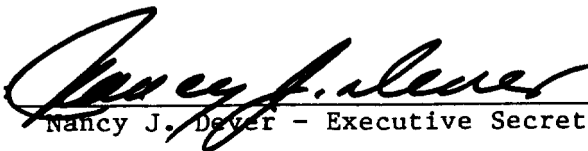
Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1989.