

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12613
Docket No. 12545
93-2-92-2-68

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Union Pacific Railroad Company violated the controlling agreement and in particular Rule 37 and Ruling No. 19 when Electrician R. L. Taylor was unjustly withheld on March 26, 1991, and then dismissed from service on the date of May 17, 1991.
2. That accordingly, the Union Pacific Railroad Company be ordered to compensate former Electrician R. L. Taylor as follows:
 - a. Compensated for all lost time including all overtime at the prime rate of interest.
 - b. Returned to service with all seniority rights unimpaired.
 - c. Made whole for all vacation rights.
 - d. Made whole for all health, welfare and insurance benefits.
 - e. Made whole for pension benefits, including railroad retirement and unemployment insurance.
 - f. Made whole for any and all other benefits that he would have earned during the time withheld from service.
 - g. Any record of this unjust disciplinary action be expunged from his unblemished personal 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.

Subsequent to an Investigation, the Claimant was found guilty of the following charges:

- "1. On November 30, 1990, you gave a false and dishonest statement to casualty management representative Dan Grauer in connection with making settlement on an alleged personal injury of June 26, 1990, wherein you told Mr. Grauer that between June 27, 1990, and June 30, 1990, you were at home when in fact you were in California during a portion of that time.
2. On December 20, 1990, you applied for and subsequently received and accepted wage continuation payments, under false pretense, in connection with an alleged personal injury of February 11, 1990, when in fact you were not entitled to such payments, having been removed from service on November 20, 1990, pending disciplinary action on an unrelated matter; a fact which you withheld in a deceptive manner when applying for wage continuation."

The Board has carefully reviewed the transcript of the Investigation which commenced on April 30, 1991, and was completed on May 1, 1991. We find that the Carrier has presented substantial evidence that the Claimant was dishonest with his employer.

With respect to the first charge, the evidence shows that the Claimant was in Anaheim, California, during the period from June 27, to July 1, 1990, attending an Amway Company convention. Subse-

quently, on November 30, 1990, the Claimant told a Carrier Claims Agent that he could not work because of an on-duty injury he sustained on June 26, 1990.

With respect to the second charge, the Claimant had had an on-duty injury on February 11, 1990. The testimony adduced at the hearing held on this matter shows that the Claimant and the Carrier's Claim Agent discussed his injury on December 20, 1990.

The Claimant told the Carrier's Agent that he was involved in a back rehabilitation program upon the advice of his personal physician. The evidence further shows that the Claimant requested to be placed on a wage continuation program while he continued his rehabilitation effort. He, therefore, was able to continue receiving pay pursuant to the provisions of that program. However, the Claimant failed to tell the Carrier's Claim Agent that he had been suspended from service on November 20, 1990 and, therefore, was not under pay. The Board finds the Claimant explanation of why he did not disclose this vital fact to the Agent not credible, particularly noting that he is not a short-term employee and that he has had considerable experience with injury-related matters.

With respect to the discipline assessed, employees who cannot be trusted and who do not take seriously their responsibility to their employer, may properly be discharged. In the instant case, the Board also notes that the Claimant's past record is not particularly good. It shows within a relatively short period that he had been suspended for absenteeism and insubordination. Accordingly, there is no proper basis to disturb the Carrier's decision in this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of November 1993.