

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13152
Docket No. 13013
97-2-95-2-36

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: ((International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “1. Consolidated Rail Corporation arbitrarily and capriciously dismissed Machinist J. M. Kaltenbrunner from service following trial held of February 3, 1994.
2. Accordingly, commencing February 17, 1994 until November 4, 1994, Machinist J. M. Kaltenbrunner should be immediately paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust dismissal occurred and have his record cleared of any reference to the charges.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant held a Machinist Grade 3 position at the Juniata Locomotive Shops, Altoona, Pennsylvania. On August 13, 1993, he asked permission to take a week's vacation, explaining that he was experiencing back pain, and planned to try to alleviate the pain through physical activity during vacation. Carrier granted his request. After his vacation period, on August 21, 1993, Claimant marked off on extended disability leave, effective that date. At no time did Claimant inform Carrier that his back problems were in any way work-related. Throughout his disability leave, Claimant supplied Carrier with reports from his personal physician (MD-25 reports). Those reports made no mention of an on-duty accident or injury. Claimant was approved for return to service without restriction and returned to work on November 1, 1993.

On December 13, 1993, Carrier received a letter from Claimant's attorney notifying Carrier that he was representing Claimant in a claim involving injuries he allegedly sustained in an on-duty accident on August 11, 1993.

On January 24, 1994, Carrier directed Claimant to appear for a trial concerning the following charges:

- “1. Your falsely reporting an on-duty personal injury allegedly sustained by you while working as a machinist in Dept. 320 on August 11, 1993.
2. Your failure to report the alleged injury sustained by you while working as a machinist in Dept. 320 on August 11, 1993 within a reasonable time.

NOTE: Local Supervisor's first knowledge was on January 14, 1994, based on receipt of letter from law offices of Forceno and Hannon.”

Following the trial, Claimant was found guilty as charged and dismissed from service, effective February 17, 1994. Claimant and his attorney continued to pursue the personal injury claim against the Carrier and the parties reached a settlement of the claim. Pursuant to the settlement, Claimant agreed in writing not to present himself for future employment with Conrail.

The Organization maintains that Carrier acted against Claimant in a discriminatory manner in retribution for his filing a legitimate injury claim against the Carrier. It seeks to have Claimant "made whole" for the time between his dismissal on February 17, 1994, and the date of the settlement – November 4, 1994. The Board finds no basis upon which to grant the Organization's claim. For reasons not clear on this record, Claimant elected to "lie in wait" and not inform Carrier about his on-duty injury allegedly sustained August 11, 1993, until the December 10, 1993, letter from his attorney, almost exactly four months later. By no stretch of the imagination does that constitute prompt reporting of an on-duty injury. The letter from Claimant's attorney was the first notification Carrier had that Claimant had allegedly sustained an on-duty injury. While Carrier's notice of trial followed that notification, it was not in retaliation for the pending lawsuit. Rather, it was in response to Claimant's blatant, self-serving disregard for Carrier's reasonable on-duty injury reporting requirement. Carrier's assessment of discipline was neither discriminatory nor excessive.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 8th day of September 1997.