

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

Parties to Dispute: ( System Federation No. 162, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen) ( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rule 34, when they unjustly assessed Carman J. P. Jackson's personal record with 60 demerits following investigation held on August 11, 1976.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to remove the 60 demerits from Carman Jackson's 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.

The claimant is a Carman with about 15 years of service with the Carrier (about 13 years when the present case arose). On July 26, 1976, he filed an "Employe's Report of Accident". In accordance with the instructions given in the form, he himself prepared the report. It gives July 12, 1976, as the date of the accident and claims a back injury as a result of bending and pulling floor plates in a railroad car. The Carrier subsequently came to the conclusion that no such accident had occurred. On the grounds of falsification, it assessed the claimant 60 demerits. The Organization is here challenging the disciplinary action, asserting that adequate evidence for sustaining the falsification charge is lacking.

It is obviously to be granted that the penalty is not unduly harsh if the claimant is guilty as charged. Equally true, however, is that falsification is the sort of offense which represents a serious blot on an employe's record. No one should be saddled with it unless shown to have committed the offense. We have, accordingly, reviewed and weighed the evidence with the greatest of care.

We do not believe that we can legitimately exonerate the claimant.

In the first place, there was in being (and still is in being) a rule at the Carrier's property requiring that: "Each personal injury sustained by an employe must be reported without delay to his immediate Supervisor." The claimant admits familiarity with the rule. One would expect him to have followed it if he in fact sustained an injury on the given date.

In the second place, there is a statement from the Claimant's co-worker attesting both to the accuracy of the foreman's version of the conversation between the foreman and the claimant on July 14, 1976 (on which conversation we will momentarily elaborate) and to his (the co-worker's) unawareness of any injury having been sustained by the claimant while working with him in the car. The co-worker's partial retraction at the hearing strikes us as insubstantial.

In the third place, the foreman testified that the claimant, on July 14, 1976, requested permission to see a doctor; that he (the foreman) asked the claimant for the reason for the request; that the claimant replied that his back had been bothering him ever since he had sustained an injury as a result of a derailment some five months earlier; and that he (the foreman) stated that the claimant was free to see a doctor (and did not need special permission for it) when the claimant assured him that he (the claimant) had not hurt himself while working for him (the foreman) in the car. The claimant's testimony, of course, is at variance with the foreman's testimony both with respect to the pinpointing of the origin of the back pain and with respect to the explicit assurance that no injury had been incurred while working for the foreman in the car. But we do not believe that we can soundly credit the two testimonies as being of equal strength and as thus yielding a stand-off. Quite aside from the co-worker's corroboration, the foreman's testimony was marked by meaningful detail, was void of telltale embellishments, was straight and firm, and remained unshaken in cross-examination. Moreover, the foreman's testimony tracks his written report of the conversation. The foreman wrote the report on July 20, 1976 -- before the claimant filed the "Employe's Report of Accident" and thus before the foreman had any reason to believe that there would be an issue as to what was and what was not said in the conversation.

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We believe that these considerations, put together, add up to a holding that the Carrier has met its burden of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

Rosmarie Brasch  
Rosmarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.