

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers)
(Grand Trunk Western Railroad Company)

Dispute: Claim of Employes:

1. That the Grand Trunk Western Railroad Company be ordered to restore Machinist R. Podlasek to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.

2. That Machinist R. Podlasek be compensated for all insurance benefits, vacation benefits, holiday benefits, protective benefits and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses in accord with the prevailing Agreement dated September 1, 1949 as subsequently amended.

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.

Claimant had been employed by the Carrier as a Machinist since October, 1978. On June 30, 1983, Claimant was removed from service pending an investigation which was held on July 27, 1983. Claimant was charged with falsification of an injury report on June 29, 1983, and as a result of the investigation he was discharged from service effective August 13, 1983.

The evidence of record indicates that on the morning of June 29, 1983, the Claimant became engaged in a shoving match with the Vacation Relief Foreman. The fact that the altercation did occur is not contested by the Organization which argued that the altercation is simply not connected to the injuries for which Claimant submitted the injury report. Carrier, on the other hand, strenuously maintains that Claimant did not sustain the injuries to himself as alleged in the personal injury report, but rather as a result of the fight with his Foreman.

The report filed by Claimant described his injuries as being to his head, neck and arms, and as occurring in the following manner; "Finished cutting weeds in turntable hole and was climbing out and fell backwards in the hole." The Organization argues that Carrier has failed to meet its burden of proof by means of direct evidence that Claimant did not injure himself in the manner stated by Claimant on the report.

The testimony of Carrier's Vacation Relief Foreman confirmed the physical altercation with Claimant. He stated that he pushed the Claimant who fell backward striking his head on the concrete floor of the Roundhouse. Claimant admitted that the altercation took place and that he fell onto his back, but he could not recall if he struck his head at that time. Carrier's Locomotive Foreman testified that he examined Claimant after the alleged accident, and that marks on Claimant's back, his cut left elbow, and right forearm, which was cut from the elbow to the wrist, had been previously reported as non-work related on June 23, 1983.

Examination of the medical report for treatment Claimant received on June 29, 1983, shows that he suffered from a probable cerebral concussion, with multiple contusions and abrasions to his shoulders, posterior, thoracic cage and left and right elbows. The medical report contains no mention in that portion pertaining to Claimant's story of the accident that any of his injuries had been incurred prior to the fight with his Foreman. Claimant testified that he made no mention of the altercation with his Foreman and the fall on June 29, 1983, when he was examined later that same day at the clinic.

Claimant testified that he struck his head when he fell backwards into the turntable pit, but he could not recall being asked by the Locomotive Foreman what he struck his head with during the fall. The Locomotive Foreman testified in consistent fashion upon both direct and cross-examination that when he asked the Claimant what he struck his head upon when he allegedly fell into the turntable pit, Claimant's only response was to smile, turn and walk away.

Claimant testified that his injuries occurred after he finished cutting weeds with a sickle in the Turntable Pit, and began to climb out of the pit. The Organization argued that the Foreman testified that he only glanced periodically at the Claimant while the latter was in the pit, and, therefore, the credibility of the Foreman's testimony was undermined. However, the Foreman testified that he did observe Claimant climb out of the Turntable Pit without incident.

The Board finds that the Claimant filed a false injury report based upon sufficient, credible evidence in the record. While the question of the credibility of witnesses is primarily one to be decided by the Hearing Officer, we have stated that such a Rule should not be mechanically applied. Second Division Awards 10379 and 10376. We are unable upon careful review of the record to find that the Hearing Officer erred with respect to his determination of credibility. The testimony of Claimant was uncertain on the critical question as to whether he injured his head in his fall during the altercation with his Supervisor immediately preceding his work in the Turntable Pit. Claimant was unable to recall whether he was ever asked by the Locomotive Foreman what object he struck with his head when he fell climbing out of the pit. Neither could Claimant explain his complete failure to inform the medical personnel who examined him the day of the alleged accident about a fall onto his back only hours earlier during the altercation with the Supervisor.

It has previously been stated by this Board that falsification of an on-duty injury report is an offense for which discharge may be proper. Second Division Awards 7738 and 8524. The Board finds Claimant guilty of the charge, however, we are of the considered opinion that Claimant's violation while serious, did not warrant dismissal in view of his service record and the facts and circumstances of this case. Claimant must be cognizant, however, that while we find the penalty was excessive in this case, future misconduct will not be tolerated. Claimant shall be reinstated with seniority unimpaired, but without backpay or other benefits which may have accrued during the period from June 30, 1983, to the date of his reinstatement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.