

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician R. E. Lewis was unjustly treated when he was dismissed from service on October 28, 1988, following investigation for alleged violation of portion of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician R. E. Lewis to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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.

On September 19, 1988, Claimant was notified to appear for a formal Investigation to develop the facts and place responsibility, if any, for his possible dishonesty in reporting an alleged injury to Dr. Lance on 5-27-88, Dr. Fields on 6-8-88, Dr. Ghidoni on 7-11-88, and Dr. Herd on 7-14-88. The notice stated further "... for this you may be in violation of Southern Pacific Transportation Company's Rule 801 ...":

"Rule 801: Employees will not be retained in the service who are dishonest."

The Investigation was held on September 29, 1988, and on October 28, 1988, Claimant was notified he was terminated from the service of the Carrier for:

"... falsely reporting and fabricating a back injury to Dr. Lance May 5, 1988; Dr. Fields on June 8, 1988, Dr. Ghidoni July 11, 1988, and Dr. Herd on July 14, 1988. Your actions in this case constitute a violation of Rule 801 of the General Rules on Regulations, that part reading:

Rule 801: Employees will not be retained in service who are dishonest."

The transcript of the Investigation reveals the Claimant had 15 years service with the Carrier.

During the Investigation, the Hearing Officer read statements from four doctors concerning their examinations of Claimant.

Dr. Fields stated:

"Robert Lewis was seen by me on 6-8-88 for lower back injury but apparently had problems from 4-5-88 until 6-4-88."

The Hearing Officer stated further:

"I have another document that is the doctor's First Report of Work Injury stating the date of injury as May 9, 1988. This was signed by Dr. Ghidoni and apparently you saw him on July 11, 1988. Do you recognize this document, Mr. Lewis?"

A. Yes.

Q. Is this the injury you were referring to?

A. Yes."

The Hearing Officer introduced a statement from Dr. Dennis Lance, stating:

"Q. I have another Doctor's First Report of Injury signed by a dr. Dennis Lance dated May 29, 1988. Is this also the injury you referring to.

A. It's the same injury --- back."

The Hearing Officer then introduced a statement from Dr. Herd stating:

"Q. I have another document dated July 14, 1988, signed by a Dr. Herd from Pacific Health Center stating the date of the injury as July 7, 1988. Is this also the date of your injury?

A. Dr. Herd from Pacific Health Center.
Oh---Yes.

Q. Mr. Lewis did you ever, at any time, report this injury to anyone at the Southern Pacific?

A. Yes.

Q. To whom did you report it?"

Claimant stated he reported the back injury to his Foreman and that the Foreman and the General Foreman sent him to a clinic in Alhambra. When he got to the clinic he was examined for dermatitis. Claimant stated he did not go to the clinic for deramtitis, he said he went for a back injury. He stated further that April 5, 1988, was the date he was treated for deramatitis.

On Page 5 of the Investigation transcript, Claimant was asked:

"Q. And at that time did you make out any reports of a injury to your back, such as form 2611 or an A or B form?

A. No. I did think it was the foreman's job to get in touch with me to make an accident report out."

Rule 46 caption "Personal Injuries" provides:

"Employees injured while at work are required to make a detailed written report of the circumstances of the accident as soon as they are able to do so, after receiving medical attention. Proper medical attention shall be given at the earliest possible moment and employees shall be permitted to return to work as soon as they are able to do so, without signing a release pending final settlement of the case. All claims for personal injuries shall be handled with the Personal Injury Claim Department."

Claimant's Foreman testified that the only thing he knew about Claimant's back injury was when he stated to him that he was not reporting an accident and it had nothing to do with job. He testified that he recalled sending Claimant to Pacific Health Center on April 5, 1988, to be treated for deramatitis. He stated further that Claimant reported his back was hurting and he asked Claimant if he was reporting an accident and was told it had nothing to do with the job.

The Carrier's General Foreman testified that Claimant was sent to Pacific Health Center on April 5, 1988. He further testified that Dr. Clancy at the clinic diagnosed the dermatitis as acne and not dermatitis.

The General Foreman testified that on June 6, 1988, Claimant brought back a doctor's slip to cover his absence stating that he was off because of a back injury or back pain. He asked Claimant if it was work related. Claimant advised it was not work related.

On November 23, 1988, Claimant signed a release for a compromise settlement for bodily injuries which occurred on or about April 5 and April 6, 1988. No specific injury was mentioned, however, April 5, 1988, was the date Claimant was sent to Pacific Health Center and was diagnosed as having acne.

With respect to the merits of the Claim, we find substantial evidence in the record to support the Carrier's decision. Claimant was an employee with 15 years service and he should have known he was required to file an accident report in accordance with Rule 46. The record reveals that every time Claimant complained about his back he told his Supervisors that it was not work related. Claimant furnished four (4) statements from four (4) different doctors listing four (4) different dates of a back injury.

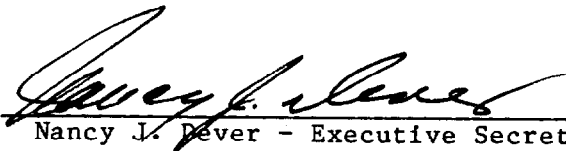
Therefore it is the finding of the Board that the Carrier was justified in concluding that Claimant was dishonest in falsely reporting a back injury to Dr. Lance on May 5, 1988, Dr. Field on June 8, 1988, Dr. Ghidoni on July 11, 1988, and Dr. Herd on July 15, 1988.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1990.