

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk Southern Railway Company violated the controlling agreement when they unjustly dismissed Student Electrician D. C. Humphries from service at their Chattanooga Diesel Shop in Chattanooga, Tennessee effective June 27, 1990.

2. That, accordingly, the Norfolk Southern Railway Company be ordered to reinstate Student Electrician D. C. Humphries to service and make him whole for any loss brought about by his dismissal and to restore all his rights and benefits as afforded him under the current controlling agreement; account of the aforesaid unjust dismissal in violation of the agreement.

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 employees 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 was dismissed for making false and inconsistent statements in connection with possible injuries on May 13, 1990, and June 24, 1990. The Organization contends that the dismissal was arbitrary and capricious and that the evidence failed to support the charges. The Organization's position is that Claimant did not intend to mislead anybody, but was confused as to the causes of his injuries and so advised Carrier.

Carrier contends that the evidence established that Claimant acted dishonestly. Carrier further argues that dismissal was an appropriate penalty under the circumstances of this case.

This Board may not review the case de novo. We must sustain the charge if it is supported by substantial evidence in the record and is not otherwise arbitrary and capricious. Our review of the record leads us to conclude that the charge is supported by substantial evidence.

Two General Foremen testified that on June 26, 1990, at a preliminary informal investigation into Claimant's absenteeism on May 16 - 19, 1990, Claimant produced doctor's excuses for the dates in question and stated that his absence was caused by a groin injury he sustained sliding down a ladder while on duty. Both General Foremen testified that Claimant's representative advised him to state that he hurt himself while working at home, but Claimant continued to maintain that he hurt himself while on duty. Claimant further stated that he did not do any other work which could have resulted in a groin injury.

The General Foremen further testified that at a subsequent informal investigation into Claimant's failure to report the groin injury, Claimant stated that he incurred the groin injury while working on a boat motor at home and denied injuring himself on the job. At another point during the informal investigation, Claimant stated that he had an infection in his testicle, rather than an injury.

According to the General Foremen, in a third informal investigation, into Claimant's alleged conflicting statements, Claimant denied injuring his groin on the job. When asked why he had initially stated that he had pulled his groin on the job and that he had done no other work which could have resulted in the injury but later acknowledged working on a boat motor, Claimant stated, "My memory got better."

The Organization contends, and Claimant testified, that Claimant's conflicting statements were the product of honest confusion. This testimony was not credited on the property. We are bound by the credibility determinations made on the property. Substantial, consistent and corroborated testimony supports the finding on the property that Claimant made false statements regarding his groin injury. We are bound by those findings.

Similarly, we find that substantial, consistent and corroborated evidence supports the findings that Claimant made false and conflicting statements concerning his alleged back injury on June 24, 1990. A General Foreman and a Foreman testified that Claimant initially reported a back injury to his Foreman, but when advised to file an accident report stated that he wished to wait to see if his injury improved. Later in the day, Claimant sought out his Foreman to discuss his back and asked the Foreman and General Foreman whether they could talk "off the record." When told that they could not, Claimant asked to see his representative. Claimant never clarified the situation to supervision and never filed an accident report. He denied having injured his back, even though he initially reported such an injury to his Foreman.


Our review of the record discloses no basis for overturning the factual findings made on the property. Furthermore, in light of all of the circumstances surrounding this case, including the seriousness of the offense and Claimant's brief tenure in Carrier's employ, we cannot say that the dismissal was arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1992.