

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12574
Docket No. 12518
93-2-92-2-36

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

(International Brotherhood of Firemen and
Oilers
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Firemen and Oiler, Quanzell Zirker was unjustly dismissed from service on December 20, 1990 after an investigation was held on December 5, 1990.
2. That accordingly, Quanzell Zirker be reinstated to service with seniority rights, vacation rights and all other benefits that are a condition of employment either by agreement or practice, unimpaired, with compensation for all loss of coverage under health and welfare and life insurance agreements during the time he is held out of service."

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.

Subsequent to an Investigation, the Carrier found that the Claimant fraudulently alleged an on-duty back injury and failed to follow the instructions of his Foreman when he did not notify him of his release from the hospital.

At the outset, the Board has carefully reviewed the various procedural and due process contentions advanced by the Organization. However, we find no evidence to set this matter aside on that basis.

With respect to the merits, the record shows that the Claimant, on November 8, 1990, objected to an assignment of work. Within a few minutes thereafter, he claimed that he had injured his back. He then went to a local hospital for examination, but afterwards did not call his Supervisor, as he had been asked to do. The physical examination at the hospital revealed no sign of an injury as claimed by the Claimant. On the following day (November 9, 1990), the Claimant was seen by the Carrier's Medical Officer who determined that the Claimant could return to work immediately.

Subsequently, the Claimant provided a note from his personal physician which stated, in relevant part, that the Claimant could not work commencing November 8, 1990, because of a "lumbar injury." He was then examined by an orthopedic specialist who found nothing wrong with the Claimant.

On the basis of our review of the testimony adduced at the Hearing and the other evidence submitted, we have no basis for overturning the Carrier's decision in this matter.

This Board has held that falsification of an on-duty injury is an offense which may properly lead to dismissal. In summary, it cannot be said that the discharge of the Claimant was arbitrary or capricious. Accordingly, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of September 1993.