

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12958
Docket No. 12839
95-2-93-2-228

The Second Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

(International Association of Machinists
(and Aerospace Workers, AFL-CIO, District
(No. 19
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

- "1. That the Burlington Northern Railroad (Hereinafter referred to as Carrier) violated the controlling Agreement, specifically Rule 35, when it improperly and unjustly suspended Machinist Steve Goeschel (Hereinafter referred to as Claimant), Havelock Wheel Shop, Lincoln, NE, from service for a period of fifteen (15) calendar days.
2. That accordingly, the carrier compensate the Claimant for all time lost, restore all rights and benefits lost and remove the entry of censure from his personal record due to his improper and unjust suspension from 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 employee or employees involved in this dispute are respectively carrier and employee 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 employed as a Machinist by Carrier in its Car Repair Wheel Plant at Havelock, Nebraska, with hours of service 3:00 PM to 11:00 PM. Claimant worked his regular shift on September 16, 1992. In the afternoon of September 17, 1992, he appeared at the Havelock Wheel Plant Office and asked to file a Personal Injury Report as he had experienced back pains at home that morning.

Claimant filled out the Injury Report stating he injured his back during work on September 16, 1992, even though he felt no pain while on duty and could not recall any specific incident or occurrence while at work that could have possibly caused injury to his back.

On September 22, 1992, Carrier notified Claimant to attend formal Investigation on October 5, 1992, "...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged falsification of a personal injury report submitted September 17, 1992." The Investigation was postponed to and held on October 7, 1992. Copy of the transcript of Investigation is before this Board for our review.

Carrier issued Notice to Claimant on October 27, 1992, advising that he had been found guilty of the charges and was being suspended from the service for 15 calendar days commencing October 28, 1992.

The Organization appealed Carrier's decision in accordance with the provisions of the Controlling Agreement. Failing to receive satisfactory resolution, the claim was filed with this Board for adjudication.

In its submission to this Board, the Organization argues that Carrier: (1) failed to sustain its required burden of proving its charges; (2) the Investigation Notice was vague and failed to specify the alleged rule violation; (3) failed to provide the Claimant with the required fair and impartial Investigation; and (4) Claimant's suspension from service was excessive discipline.

We have reviewed the record submitted and do not find where (2) was raised in the handling on the property. We also find that (3) was not raised until the final appeal was made on the property. We deem the arguments made under (2) and (3) waived as it is well settled by numerous prior Awards of this Board that exceptions to a charge or the manner in which an Investigation is conducted must be raised during the course of the Investigation. This Board has also ruled in many prior awards that it is not necessary to cite specific rules in a letter of charge. See Second division Awards 8928, 8495, 8492, 8194 and 7936.

Furthermore, our review of the charge and transcript of Investigation convinces us that the charge against Claimant was very precise and enabled him and his representative to prepare a defense. We are also convinced the Claimant was afforded a fair and impartial Investigation.

Study of the transcript of Investigation persuades the Board that Claimant was culpable of the charges. This is so for the reason that Claimant gave inconsistent statements concerning his alleged injury. For example, on September 18, 1992, he explained to Dr. Dan L. Mosier that while working his job in the Wheel Shop on September 16, 1992:

"He felt a slight pull but had no immediate pain in his low back. He didn't think much of it at the time and therefore didn't report an injury."

During the Investigation on October 7, 1992, Claimant in response to the question:

"Q. Mr. Goeschel, you had indicated to me earlier, in my questioning of you, that you could identify no specific instance or occurrence that would have identified the injury as you reported on September 17, 1992. Is that correct?"

answered "Yes sir."

We also note Claimant's testimony:

"Q. You don't know whether there was a specific incident or accident?

A. There was no accident.

Q. Was there an incident?

A. No there was no incident.

* * * * *

Q. OK, you didn't have any pain when you went home, but was there a specific accident or incident?

A. I don't think so, no."

In addition to Claimant's inconsistent statements, four supervisors testified that when Claimant came to the office on the afternoon of September 17, 1992, to file a Personal Injury Report, he could not recall any incident or occurrence on September 16, 1992, as the cause of his alleged injury. He stated on his Personal Injury Report "I don't know how it happened."

The record reveals a credibility question, Claimant stating on September 17, 1992, he felt nothing while performing his work assignment on September 16, 1992; then on September 18, 1992, stating to Dr. Mosier that while working his job in the Wheel Shop on September 16, 1992, "He felt a slight pull"; then during the Investigation stating numerous times that he could not identify any specific occurrence that would identify with the injury. No accident, no incident, nothing.

This Board is in no position to determine credibility and, as we have said on many previous occasions, we will not attempt to do so. Credibility decisions are best left to the Hearing Officer as he is in a position to assess the demeanor and conduct of those testifying, including the charged employee. Carrier's conclusion that Claimant was guilty of falsifying his injury report will not be disturbed.

Turning to the question of proper discipline, we are not persuaded that a 15 calendar day suspension is excessive, arbitrary or capricious. Falsification of an injury is serious in nature and generally results in dismissal from service. Suspension assessed in this case was very lenient.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 5

Award No. 12958
Docket No. 12839
95-2-93-2-228

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 18th day of September 1995.