

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13096

Docket No. 12983

97-2-95-2-4

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Brotherhood of Railway Carmen, Division of the
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"1. That the TRRA of St. Louis violated the controlling Agreement of August 21, 1954, as subsequently amended, when on August 10, 1993 Carman J. E. Bielicke was unjustly dismissed from service as a result of formal investigation held on July 20, 1993.

2. That the TRRA of St. Louis be ordered to return Carman J. E. Bielicke to full service with payment for all lost wages, restoration of all seniority rights unimpaired and all fringe benefits, including, but not limited to vacation, insurance and all other benefits which are a condition of employment."

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 were given due notice of hearing thereon.

On June 23, 1993, the Carrier notified Claimant as follows:

"... An investigation will be held in the Conference Room, General Superintendent's Office ... at 9:00 A.M., Wednesday, June 30, 1993, to develop the facts, discover the cause and determine your responsibility, if any, in connection with your alleged falsification of a Personal Injury reported on April 21, 1993, alleging Personal Injury occurred on April 9, 1993; and to determine if any Operating Rules, Safety Rules or Special Instructions were violated in connection therewith...."

The Investigation commenced July 1, was continued until July 20, and was completed July 21. The transcript is 221 pages in length and almost as many pages of exhibits. To say this matter was covered exhaustively is an understatement. A review of the evidence convinces this Board that the Carrier did substantiate its charges that Claimant filed a fraudulent injury report.

On April 9, 1993, two cars of granulated ammonium nitrate tipped on their side in the yards. Both cars had tears in their fabric, as well as a door that opened leaking the contents on the ground. Claimant and one other laid down in the spilled nitrate and attempted to block the leaks with whatever was available. Neither wore protective clothing or masks, as the Carrier determined that the granulated ammonium nitrate constituted no risk.

Within days of the derailment, Claimant started to experience cold-like symptoms including a feeling of chest compression. The symptoms persisted, and on April 21, 1993, Claimant filed an injury report indicating respiratory problems caused by the ammonium nitrate.

The Carrier immediately launched an investigation to determine if the ammonium nitrate was, somehow, toxic enough to cause the cold-like symptoms Claimant complained of. A check with the company producing the nitrate indicated that the product was absolutely safe, that their employees wore a simple dust mask only when working inside in confined spaces, but when outside, they do not wear the mask.

When Claimant filed the injury report on April 21, he immediately was taken for a medical opinion as to the effects of the ammonium nitrate, and was released to return to work with a clean bill of health. The Carrier then contacted Doctor Dykewicz, who is the Assistant Professor of Internal Medicine and Director of Occupational Asthma and Allergy Evaluation Service.

Dr. Dykewicz's evaluation conclusions as to the affect the ammonium nitrate had on Claimant are as follows:

"... The major question in this case is whether the patient's workplace exposure to prilled ammonium nitrate on 4/9/93 could have caused the development of development of his medical complaints. In summary, I do not believe that after thorough review of the patient's history, available medical records, or review of material safety data sheets in the medical literature, that the ammonium nitrate exposure could account for the patient's medical problems. The basis for this conclusion is as follows. First, unaltered ammonium nitrate despite extensive wide spread, worldwide use has not been documented to cause the development of respiratory disease. At high temperatures, decomposition of ammonium nitrate may produce highly toxic nitrous oxide vapors that might cause respiratory damage, but I have been informed that there was no fire at the time of the 4/9/93 spill or other source of high heat that could cause the decomposition of ammonium nitrate to produce nitrous oxide. Moreover, the fact that the ammonium nitrate fertilizer was prilled with Galoryl ATH minimized the likelihood of significant respiratory exposure to fine particles of the fertilizer. The pulmonary function test available for my review that were performed in your office and in my office do not indicate any significant lung disease. Specifically the pulmonary function tests do not support a diagnosis for asthma and the patient's history is that he had relatively minimal improvement from the course of prednisone and Proventil. It would have been expected that had the patient developed asthma that he would have reported much better improvement with these medications. It is conceivable that the patient may have had bronchitis or rhinitis although his physical examination at the time of my evaluation was normal. Although it is possible that bronchitis and rhinitis could occur in response to a single high level irritant exposure, I have already noted that ammonium nitrate is not known to be a significant respiratory irritant.

In cases in which agents are capable of acting as irritants to produce bronchitis or rhinitis, the acute exposure to that agent should illicit irritant symptoms such as burning of the nose or eyes, cough or throat irritation at the time of exposure. In the case of this patient and his co-worker, ***, neither individual experienced any irritant symptoms at the time of exposure to ammonium nitrate, confirming the conclusion that ammonium nitrate was not acting as a respiratory irritant. Although this patient reports developing respiratory symptoms within a day or two of exposure to the ammonium nitrate, this is a temporal pattern inconsistent with a causal role for ammonium nitrate acting as a irritant. In addition, ammonium nitrate is not a respiratory sensitizer and should not be capable of inducing respiratory disease on an allergic basis.

I believe that the most likely explanation for this patient's medical complaints was that he developed a coincidental viral syndrome shortly after the ammonium nitrate exposure that may have led to bronchitis and rhinitis, and on the basis on the patient's history, possible sinusitis. In summary I do not believe that exposure to ammonium nitrate fertilizer or the coating agent used with the fertilizer caused the development of the patients symptoms described in this report. Even if pulmonary function tests performed in Dr. Dew's office (again these were not available for my review) were consistent with airway obstruction, I do not believe that this could be attributed to the ammonium nitrate exposure. A viral syndrome being spread between co-workers could also explain why Mr. Bielicke's co-worker, ***, developed symptoms consistent with a viral infection at about the same time...."

It is the conclusion of the Carrier, supported by an expert witness, that Claimant's illness was due to a "viral syndrome" and not the ammonium nitrate. The Board agrees with the Carrier's findings. The Carrier did fulfill its obligation to furnish substantial evidence of Claimant's culpability for the charges assessed. A false injury claim is a dismissible offense. Carrier's decision to dismiss Claimant from its service will not be disturbed.

Since it is the finding of this Board that the Carrier substantiated its charges with sufficient evidence, there is no need to adjudicate Carrier's procedural arguments.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of January 1997.