

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13224
Docket No. 12940
98-2-94-2-95

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

STATEMENT OF CLAIM:

- “1. That CSX Transportation Company violated the current controlling agreement with this Organization, particular Rule 34, on November 24, 1993 when Carrier notified Sheet Metal Worker D. H. Keller, (employed for 20 (twenty) plus injury free years at the Corbin, Kentucky facility) that he was dismissed from service effective immediately. This notice of dismissal is referenced to in an investigation which was held November 17, 1993 at the Carrier's facility in Corbin, Kentucky.
2. That accordingly, the Carrier be directed to return Mr. Keller to service as a Sheet Metal Worker with compensation for all time lost, including overtime he may have been deprived of, the removal of any impairment to his seniority, make him whole for any monies that may be due him as a result of Carrier's cancellation of his and his family's medical and dental insurance or any other losses that Mr. Keller might have incurred due to the Carrier's unjust dismissal.”

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.

The Claimant is a Sheet Metal Worker with more than 20 years' service. According to the Organization's undisputed statement, his work record is "injury free." The Claimant was subjected to an investigative Hearing under the following charge:

"... [Y]our responsibility, if any, in falsifying the accident report in connection with the alleged injury sustained by you on Sunday, June 20, 1993 at approximately 10:00 A.M., while performing sheet metal worker duties on locomotive CSXT 7602."

Following the Hearing the Claimant was dismissed from service. At the time of the Hearing, which commenced on November 17, 1993, the Claimant was out of service based on medical advice.

The Board reviewed procedural objections raised by the Organization and finds them without sufficient significance to have denied the Claimant a full and fair Hearing.

According to a Carrier account prepared by a Foreman, the Claimant advised the Foreman at 1:00 P.M. on June 20, 1993 that at 10:00 A.M. that day:

"[H]e was sitting on the ramp with his legs extended below ramp level between the floor ramp and air locker . . . changing the dead engine feature. He said he was leaning forward to loosen the fittings when he hit his right knee on the edge of the air locker. He said his knee was not bothering him at this time but he wanted a record of this in case of future problems."

Several Carrier representatives, as well as the Carrier Nurse, talked with the Claimant and examined his knee. The Carrier contends that none of these individuals noticed any swelling or bruise on the Claimant's knee.

On June 24, 1993 the Claimant stated his knee was bothering him, and he completed a Report of Personal Injury. The Report included the following:

"At this time 1:00 p.m. Sunday [June 20] my knee was sore and swollen."

As best as can be determined, it is the Carrier's view that the Claimant was guilty of falsification by stating his knee was "sore and swollen", because he did not report such at the time, nor was any swelling observed by others. The Carrier, somewhat indirectly, also suggests that the Claimant may have falsely stated that any injury occurred at all.

This matter is closely similar to that reviewed in Second Division Award 13211, involving the same Carrier. Therein, the Carrier disputed an employee's contention as to his exact location when allegedly incurring an injury. Award 13211 stated:

"By challenging the account in the Report of Personal Injury and the Claimant's corroborating written statement, the Carrier assumes an affirmative defense. As a result, it is not the Claimant's burden to prove that he was not in the cab; rather it is the Carrier's burden to prove that he was not in the electrical locker. The Board finds the Carrier failed to provide reasonable proof in support of its contention."

Here, the Carrier argues that a statement as to a "sore and swollen knee", not so stated earlier, is sufficient to warrant termination of the Claimant's employment. Here, too, the Carrier raises a defense for which it must provide adequate proof. Such proof is lacking.

To the contrary, Manager Operations Support W. S. Landers, recounting an interview with the Claimant on the day of the alleged occurrence, stated:

“[The Claimant] did point out that on the inside of his knee there possibly could be some slight swelling there.”

The Manager Operations Support also testified that the Claimant said, “It did hurt slightly when he bumped his knee.”

During the course of the claim-handling procedure, Carrier representatives expressed strong doubt as to any possible connection with what the Claimant reported as to injury and an underlying chronic condition in his knee. This, certainly, is a medical judgment for which the Carrier’s appeal representatives are unqualified to make.

The extent, nature, and duration of an injury are clearly proper topics for any ensuing litigation over on-duty injury compensation. It was entirely premature and without foundation, however, to suggest that the Claimant was “falsifying” an accident report. Further, because the Carrier offered no convincing evidence that the entire episode never occurred, describing pain in varying terms hardly seems an offense warranting dismissal.

The Carrier is here concerned with an employee with more than 20 years’ service. The Claimant followed the Rules in reporting the incident in a timely fashion, while at the same time not initially contending that an “injury” had occurred. This appears to be a procedure favorable to the Carrier. No past disciplinary record, repeated injury occurrence, or accident proneness was cited. Because the record provides no proof of the charge, the claim must be sustained. The Award, however, limits the Carrier’s liability to that provided in Rule 34; in addition, payment for “wage loss, if any” properly may commence only at such date as the Claimant was medically certified to be able to return to work.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of March 1998.