

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13361

Docket No. 13240

99-2-97-2-7

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(The Burlington Northern Santa Fe Railway
(Company (former Atchison, Topeka and Santa Fe
(Railway Company)

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the ‘Carrier’) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the ‘Organization’) when it wrongfully and unjustly dismissed Kansas City, Kansas Machinist Ronald W. Seefeldt (hereinafter referred to as the ‘Claimant’) cited in violation of various Carrier Rules for alleged falsification and misrepresentation of an injury on property while on duty.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40 (i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal record.”

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.

Claimant was dismissed from the service of the Carrier on December 6, 1995 as a result of a formal Investigation held on November 20, 1995. Carrier found that Claimant falsified and misrepresented an injury that allegedly occurred on October 29, 1995. The Carrier found Claimant violated Rules 1.2.7, 1.3.1 and 1.6.

Rule 1.2.7 reads:

“Furnishing Information

Employees must not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations.”

Rule 1.3.1 reads:

“1.3.1 Rules, Regulations, and Instruction

Safety Rules. Employees must have a copy of, be familiar with, and comply with all safety rules issued in a separate book or in another form.

General Code of Operating Rules. Employees governed by these rules must have a current copy they can refer to while on duty.

Hazardous Materials. Employees who in any way handle hazardous materials must have a copy of the instructions or regulations for handling these materials. Employees must be familiar with and comply with these instructions or regulations.

Air Brakes. Employees who are affected by air brake operation must have a copy of the rules and instructions for operating air brakes and train handling. Employees must know and obey these rules and instructions.

Timetable/Special Instructions. Employees whose duties are affected by the timetable/special instructions must have a current copy they can refer to while on duty.

Train Dispatchers and Control Operators. The train dispatchers and control operators must have a copy of rules and instructions for train dispatchers and control operators. They must be familiar with and obey those rules and instructions.

Classes. Employees must be familiar with and obey all rules, regulations, and instructions and must attend required classes. They must pass the required examinations.

Explanation. Employees must ask their supervisor for an explanation of any rule, regulation, or instruction they are unsure of.

Issued, Canceled, or Modified. Rules may be issued, canceled, or modified by track bulletin, general order, or special instructions.”

And Rule 1.6 reads:

“Conduct

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome
- or
7. Discourteous”

The Organization argues that the Carrier failed to prove the charges against the Claimant and the Hearing was not fair and impartial.

The facts brought out at the Investigation reveal Claimant was working the 4:00 P.M. to midnight shift at the Carrier's locomotive facility at Kansas City, Kansas, on October 29, 1995. Claimant was assigned with another Machinist to change filters on locomotive No. 837. After working for almost two hours Claimant reported that something in his hip popped when descending the ladder being used to change the filters. After receiving medical attention which indicated a muscle strain, Claimant was given crutches to aid with walking.

The Organization claims all witnesses were not called to testify. The Carrier responds to the Organization claim as follows:

"There was no impropriety in not allowing witnesses to testify who had no firsthand knowledge of the matter. In any event, one of them was allowed to testify (transcript page 78). Furthermore, the reason you wanted them to testify was for the purpose of establishing that the claimant did not limp prior to the alleged on-duty incident, a fact that had already been established by the testimony of other witnesses."

Carrier also failed to call the Machinist Claimant was working with on the locomotive when the injury occurred.

The Claimant admitted to moving furniture on the two days prior to the day of the injury. Ergo, the Carrier makes the assumption Claimant hurt himself moving furniture. However, there is no evidence to prove the assumption. The Carrier in its Submission stated as follows:

"Petitioner would have this Board believe that there is no proof of an injury incurred while moving furniture or of a deliberate avoidance of doing exercises and that, therefore, these things must be disregarded. Petitioner is correct to the extent there is no such proof. In fact, there is no way of proving it. One can only say this constitutes 'circumstantial evidence', which standing alone, does not prove Claimant's guilt.

What is very evident from a review of the testimony elicited at the formal investigation is that there were several statements made by the

Claimant that simply do not make sense or were contradictory. One can only conclude that there was no on-duty injury or, at best, if there was an injury, or an exacerbation of an earlier non-work related physical problem, it most certainly did not happen the way the Claimant would have us believe.”

Contrary to the Carrier’s position, it is required to prove the Claimant violated its Rules. In this case it has failed to do so.

AWARD

Claim sustained.

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 23rd day of February 1999.