

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24206
Docket Number CL-2409

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(CL-9418) that :

(1) Carrier violated the Agreement between the Parties when it erroneously determined that Operator Clerk E. L. Barton falsely asserted to an on-duty-injury at 6:20 P.M., March 12, 1980, at Mansfield, Ohio, and suspended him from service for ninety (90) days, and

(2) Because of such wrongful action, Carrier shall reverse the decision assessing discipline, exonerate Mr. Barton of involved charges and compensate him for all wage losses suffered during the ninety-day suspension period, commencing April 29, 1980.

OPINION OF BOARD: This dispute turns on the question of credibility. Claimant herein, a long service employee, was found guilty of falsifying an accident report relating to an on-duty injury. The finding followed an investigation which was commended by Claimant's representative; the Board concurs in that the investigation appears from the record to have been carefully and thoroughly conducted.

The question to be resolved in this matter is whether Claimant suffered an injury prior to reporting for duty on the day in question resulting in identical symptoms: passing of blood in the urine. It is clear that he did indeed report an incident preceding his reporting time to a fellow employee; he admitted having discussed such incident. The hearing officer decided to credit the testimony of the fellow employee and did not believe Claimant's version of the events. There is no doubt with respect to an injury having been incurred since Claimant was hospitalized for some six days.

The Board notes that it is unable to make the necessary credibility finding which the Petitioner seeks. It is long and well established that the truth or falsity of testimony, particularly when there is substantial conflict in such testimony, is reserved to the trier of fact on the property, generally the hearing officer at the investigation. An appellate tribunal, such as this Board, is not in a position to make such determinations, and must accept the conclusions reached by the trier of fact in this regard (see Awards 16354, 13179 and 22145 among many others).

Given the factual conclusion reached by the Hearing Officer in this dispute, there was substantial evidence to support the finding that Claimant was guilty. Under the circumstances, the discipline imposed appears to be reasonable.

FINDINGS: The **Third** Division of the **Adjustment** Board, upon the whole record and all the **evidence, finds and holds**:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order of Third Division**

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

