

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26282
Docket Number MS-26784

James R. Johnson, Referee

(Richard E. Hanson

PARTIES TO DISPUTE: (

(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"1. The Burlington Northern violated Rules 2, **3a, 3b, 3d, 5, 40a, 401, 45a 45b, 69a, 24a, 15f, 42a**, and in fact the entire scope of our Collective Bargaining Agreement. The Agreement is, as it should be, a legal and binding contract to which the Burlington Northern freely entered into, but which they frequently violate.

2. The Burlington Northern fired me illegally, without a 'fair and impartial investigation' and without cause.

3. I be reinstated with all seniority and all other rights and benefits resorted, and a Timecheck be issued to myself (at laborers rate of pay) from September 17, 1985 to and inclusive of the date I have said **Time-**check in my hand and this matter is resolved."

OPINION OF BOARD: Claimant was assisting the operator of a Locomotive Crane on July 29, 1985. After a rough coupling, he complained to the operator that his wrist hurt, and that he wanted to see a doctor. After examination by a Company doctor, he was given medication for pain in his wrist, and sent home.

The following day, July 30, 1985, Claimant filed a Personal Injury Report with the Carrier, asserting that he had received injuries to his head, neck, back and wrist, and that he estimated that he would be off duty for at least 400 days. The Claimant indicated that he sent copies of the Report to the Federal Railroad Administration, and several others. Because of the conflict between his complaint to the doctor and his Personal Injury Report, as well as the fact that he sent copies to outside parties, an Investigation was scheduled, and Claimant was charged with the violation of several Carrier Rules.

Claimant requested, and was granted several postponements, because he was in pain; however, on August 26, 1985, the Carrier notified Claimant that no further postponements would be granted without medical evidence of his inability to attend. No evidence was furnished by the Claimant, and the Investigation was held on August 28, 1985. Claimant was dismissed from the service following the Investigation.

Claimant raises several procedural objections, the most serious of which is that he was denied due process because he was required to attend the Investigation with diminished capacity, due to his tieavy medication. The Carrier counters that the Hearing was appropriate, because he had been granted several postponements, and failed to submit medical evidence to support further postponement. Further, it cites the Claimant's testimony and conduct during the Investigation as evidence that he was competent to stand trial. The Board agrees with the Carrier, and dismisses the Claimant's objection.

The record contains testimony and other evidence which supports the contention that the Claimant **did** falsify his Personal Injury Report. **His** version of the speed and seriousness of the coupling is directly contradicted by the Crane operator. His statements and complaints to the doctor on the day of the accident are in direct conflict with the statements and complaints in his subsequent Personal Injury Report. Even the office notes provided by the Claimant in support of his position **cause** one to question his veracity. The following, from the notes of the September 3, 1985 examination by Doctor Teal, is pertinent:

"This patient repeats again and again that he understands his low back pain, that he knows what is wrong and does not want that examined.

. . . When I try to check the motion in his spine he states that he had not moved his back for years **and does not want to move it.**"

The foregoing does not reflect the actions of an employee who is interested in determining the cause of his severe pain, and does not corroborate his assertion that his head, back and neck were injured. To the contrary, the record indicates that Claimant restricted the scope of both medical examinations.

This Board **has** held, repeatedly, that it will not substitute its judgment for the Hearing Officer's in determining the credibility of conflicting testimony. In this case, the Carrier's witness presented consistent, positive testimony, while the Claimant was evasive, vague and equivocal. There is no basis to disturb the Hearing Officer's determination.

In view of the seriousness of the offense, the penalty of discharge was appropriate.

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 **Employee** involved in this dispute are respectively Carrier **and Employee** 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


Nancy J. Dover - Executive Secretary

Dated at **Chicago**, Illinois, this 24th day of April 1987.