

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26590
Docket Number MW-26987

John E. Cloney, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. **Paul** and
(**Pacific** Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

(1) The dismissal of Laborer J. C. Jefferson for allegedly 'falsifying your 171 injury report of August 6, 1984 and failing to report to the company doctor on August 30, 1984 as instructed' was without just and sufficient cause and on the basis of unproven charges (System File C #26-84/D-2672-1).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was terminated by the Carrier by letter dated August 31, 1984, which informed him:

"Your services . . . are hereby terminated for (**false-fying**) (sic) your 171 injury report of August 6, 1984 and failing to report to the Company doctor on August 30, 1984."

At a Hearing conducted on September 18, 1984, Claimant testified that on Friday, August 3, 1984, at about 1:00 P.M. he grabbed a rail that was swinging from a Pettibone Crane to keep it from striking him and as he did so he felt something pulling in his back. As he had previously received permission to leave at 2:00 P.M. that day, and as he felt it "would be **allright** by Monday" he went home without saying anything to anyone. When he got home the pain increased so he went to a medical building at which he believed a company doctor had offices. Not finding the doctor, Claimant went home.

On August 6, 1984, Roadmaster Bock was told by Foreman **Silva** that Claimant's wife called to say Claimant had a back problem. Bock called Claimant's home. Claimant was out but called back shortly. Bock asked Claimant if he injured his back on the job and told him if so a Form 171 had to be completed. According to Bock, Claimant said he had not hurt his back on the job and repeated this twice or three times, saying "the thing had been coming on **slowly.**"

Claimant's version of this conversation is that when Bock asked if he was hurt on the job he replied:

"I said I would rather not get into it now. I said because I want to see a doctor and see what the injury is all about because I have been having problems with my glands here and I thought maybe that could be the problem, although when I picked up that rail it hurt, ya see, so that is what I told Mr. Bock."

About **noon** on August 6, 1984, Claimant filled **out** the 171 Form.

According to Bock various attempts to reach Claimant failed so he ordered Clerk Hugo to instruct Claimant to see Dr. Baker when Claimant came in on August 30, 1984, for his check. Claimant went to see the doctor on August 31, 1984, but by then the letter of dismissal had been sent. He denied he was told to go on any specific date. He also testified he told the Clerk on August 30, 1984, that he could not go to the doctor that morning because a Claim **Adjuster** was coming to his home.

On September 25, 1984, the Carrier notified Claimant his discharge was upheld.

The Organization argues Claimant was in fact injured and did not falsify the Form 171. It further contends Claimant was not specifically instructed to visit the doctor on August 30, 1984.

This Board has often noted it is in no position to resolve credibility or factual questions. Whether Claimant was injured on the job only he knows. However, Bock's testimony that Claimant repeatedly denied being injured at work, coupled with Claimant's statement that he refused to discuss the matter with Bock when questioned, afforded Carrier a reasonable **basis** upon which to conclude the Form 171 was not factual. Claimant's contention that he told Hugo why he could not see the doctor on August 30, 1984, may be considered inconsistent with his denial that he was told to go that day. In the circumstances of this **case** this Board cannot conclude the charges were not proven.

The Organization also contends Claimant was not afforded due process in that the Division Engineer, who rendered the decision, was not the Hearing Officer. That position was not taken on the property and therefore we cannot now consider it.

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. Deyer - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1987.