

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10334) that:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Barstow, California, by improperly removing P. E. Mahoney from service as a result of formal investigation held January 26, 1988; and

(b) Carrier shall now reinstate P. E. Mahoney to service with all rights unimpaired; and

(c) Carrier shall also pay P. E. Mahoney the daily rate of his last assigned position for each work day (40 hours per week) from the date of dismissal forward, until he is reinstated to service."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant, with a seniority date of November 3, 1959, was on a scheduled vacation from August 31 through September 4, 1987. While on this vacation he was, with Carrier's permission, breaking in on a Head Clerk's position to which he was to displace. While working on the new position, on September 4, 1987, Claimant allegedly sustained a back injury while performing filing work. He was off for the long Labor Day weekend, and on the following Tuesday, September 9, 1987, at the beginning of the workday reported the injury

and asked to see a doctor. He filed the required injury report on September 9, 1987, and was taken to get medical help by Carrier officials. On the same day he was cited with alleged violation of Carrier rules and was instructed to report for an investigation. He was charged with "....failure to give his immediate supervisor verbal notice of his alleged injury and withholding information on date of alleged injury, September 4, 1987, and/or alleged falsification of injury on Form 1421 completed by him on September 9, 1987...." Following the investigation held on January 26, 1988, Claimant was found guilty of the charges and dismissed from service.

The Organization asserts that Claimant was not initially aware of the severity of his injury and thus did not report it until the pain indicated that he had a problem. Further it is argued that the penalty of dismissal was arbitrary and capricious and obviously too severe for the particular infraction, even if he were guilty.

Carrier insists that Claimant was guilty of the charges and that the discipline was warranted. First, Carrier notes that there is serious question as to whether there was indeed any injury sustained. Further, based on the information adduced at the investigation, there is no explanation of the reasons for the delay in reporting the alleged injury for a period of five days; similarly with respect to the injury report form. Carrier also indicated that it had offered to reinstate Claimant on a leniency basis, but the offer had been declined.

The Board must note that there are good and sufficient reasons for Carrier rules with respect to prompt reporting of injuries. However, there are certain types of accidents in which the extent of the injury is not initially apparent. In this instance the alleged problem was not readily apparent at the time of the incident. However, a long service employee such as Claimant should have known the imperative of complying with Carrier's rules and there is no ready explanation for the five day hiatus. Therefore, Carrier was correct in determining that there had been a rule violation, but the extent of the discipline accorded Claimant was disproportionate to the infraction. As we have said in many Awards, misdemeanors do not require life sentences (Third Division Award 18016). In this dispute we believe that termination was inappropriate and can be characterized as harsh and discriminatory. For that reason, Claimant shall be reinstated with seniority intact, and all other rights unimpaired (provided that he is medically cleared to work) but will not be reimbursed for the time out of service.

A W A R D

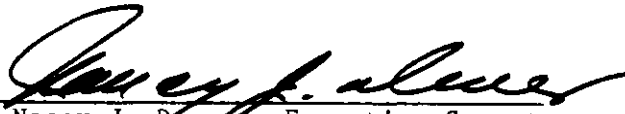
Claim sustained in accordance with the Findings.

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Award No. 28549
Docket No. CL-28710
90-3-89-3-95

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.