

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30989
Docket No. MW-31629
95-3-93-3-633

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

- (1) The dismissal of Track Repairman J. Washington for allegedly falsely claiming a job related injury, for which he completed Carrier-furnished personal injury reports in August, 1992, was without just and sufficient cause, on the basis of unproven charges and in any event too harsh and excessive [System File 17(37)(92)/12(92-1276) LNR].
- (2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

Claimant was charged with violation of Operating Rule 501, which reads as follows:

"Employees must not be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent. They must not willfully neglect their duty, endanger life or property or make false statements or conceal facts concerning matters under investigation."

Following a timely held Investigation, Claimant was dismissed from service on October 26, 1992.

The facts as garnered from the transcript and the on-property handling are as follows.

Claimant complained to his Foreman sometime around June 13, 1992 about his sore leg. The Foreman asked Claimant if the soreness was job related and if he needed medical attention. Claimant declined the offer of medical services and indicated he did not know how or when he sustained the injury.

On June 15, 1992 an Assistant Roadmaster queried Claimant. He first stated that Claimant said the injury was not job related, but then in further testimony stated that Claimant told him he did not know when or how the injury was sustained.

In August 1992 Claimant asked about the wage continuation plan contending he sustained an injury in June. A meeting was convened with Claimant, his Foreman, the Assistant Roadmaster, the Engineering Administrator and the Assistant Division Engineer.

During the meeting Claimant stated he suffered the injury on June 6, 1992 while carrying buckets of rock to be used as fill.

Following the meeting, Claimant, at the direction of the Assistant Division Engineer and with the assistance of an administrator on the Engineering Staff, completed the required, but belated injury reports. Claimant had to be assisted in completing the reports because of a literacy problem.

Claimant's defense is that he had not been dishonest, nor had he made any false statements. He alibi's his reluctance to advise his Supervisor and the Assistant Roadmaster as to the cause of the injury at first, because he believed if it was minor and that if he lost no time it would not become a reportable injury. He was advised by the Assistant Division Engineer that his reasoning, in this regard, was faulty.

Claimant further insists he never told anyone that the injury was not work related. He only stated he did not know when or how the injury was sustained and it was not until August when he sought entry into the wage continuation program that he could state

definitely that it was not only work related, but he knew when it occurred and what he was doing on the day he was injured.

Furthermore, in reviewing the two injury reports, the date of incident is recorded as June 6, 1992. On a second form it is recorded as June 30, 1992. An effort was made by the Organization to lay the blame for the date discrepancies on the shoulders of the Engineering Administrator, as though he purposely erred in completing the forms, whereas unrefuted testimony of the Administrator established that he was only filling in the blanks as dictated by Claimant.

Clearly, Claimant (and for what reason, only he knows) was purposely vague at the outset as to when, why and how the injury occurred, and to that extent, he was dishonest. This is particularly so, in view of the fact that about ten weeks subsequent to the June incident, he desired to enter the wage continuation program, and he knew the date of injury, the approximate time and the work he was performing.

The Carrier has sufficient grounds to discipline, but there is no showing that Claimant's actions were deliberate with the intent to defraud. It is this Board's opinion that even though it is a serious matter for an employee to violate Rule 501, Claimant (a 17 year veteran with a clean record) paid a heavy price for his misguided attempt to hide the injury in order to keep it from being reportable.

Obviously, any further violations of a similar nature need not be tolerated by the Carrier. Claimant shall be reinstated to service with all rights unimpaired, but without pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

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 Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.