

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31917
Docket No. MW-32353
97-3-95-3-202**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. A. George for alleged violation of CSX Transportation Operating Rule 501 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement [System File SPG-D-9173/12(94-589) CSX].**
- (2) As a consequence of the above-stated violation, the Claimant shall be reinstated to service with all seniority and benefits 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 were give due notice of hearing thereon.

At the time of the incident discussed herein, the Claimant was assigned to Tie Gang SPG 5XT6. On January 31, 1994, the Claimant was unloading spike kegs from a reclaimer machine when he felt a "little pain" in his lower back. He continued to work thinking that it would go away after he soaked in a tub later that evening. The pain, however, did not go away and he contacted his supervisor and was instructed to "lay down." The following morning the Claimant alleges that he left a message for his supervisor at the front desk of the motel advising him that he would not be able to protect his assignment because of his back pain.

Later that evening, Claimant's supervisor spoke with Claimant stating that he had been advised by the front desk that the Claimant did not report for work because he had a toothache. Claimant then told his supervisor that that was incorrect and advised him that his back pain did not go away.

On February 2, 1994, Claimant's supervisor and Roadmaster Cartwright met with the Claimant and filled out the proper personal injury forms. At that time, the Claimant was advised that he was being removed from service pending an Investigation.

This claim arose after the Claimant was dismissed from the Carrier's service after being found guilty of dishonesty and making false statements. The Organization appealed the discipline contending that the Carrier failed to provide the Claimant a fair and impartial Hearing and failed to prove the charges leveled against him. Furthermore, the Organization argues that the charges leveled against the Claimant in this case were vague.

The Board reviewed the procedural arguments raised by the Organization and we found them to be without merit. The Claimant was afforded a fair and impartial Hearing and the Notice of Investigation was sufficient to apprise the Claimant of the charges against him and allow him an opportunity to prepare his defense.

With respect to the substantive matters, the Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being dishonest with the Carrier in reporting his alleged on-the-job injury on the dates in question. The record reveals several different stories that the Claimant made to various people relating to his alleged problems. They ranged from toothache, to headache, to

backache. Clearly, the Carrier deserved more honesty in this type of a situation than it received from the Claimant.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case served the Carrier for a number of years. However, this Board has held on numerous occasions that acts of dishonesty, even on the first occasion, can serve as grounds for dismissal. In this case, the Claimant was obviously dishonest with the Carrier on numerous occasions relating to an alleged on-the-job injury. He provided inconsistent stories to various people and they were an insufficient basis to support his allegations of a back injury that occurred on the job. Consequently, we find that for all of the above reasons, the Carrier's action in terminating the Claimant was not unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.