

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32288
Docket No. MW-32643
97-3-95-3-441**

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. J. J. Peterson for allegedly violating General Rules A, B, D, E and I and Rules 600, 607, 621, 4000 and 4004 of Form 7908, Safety, Radio and General Rules for All Employes, in connection with the charges of alleged late reporting and falsification of an alleged personal injury which occurred on March 27, 1994 in the vicinity of Sumner, Washington, was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File D-213/940450).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all rights and benefits unimpaired, he shall be compensated for all wage loss suffered and his record shall be cleared of the charges leveled against him.”**

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 given due notice of hearing thereon.

The Claimant entered the Carrier's service on May 28, 1992. After a formal disciplinary Hearing was held on April 28, 1994, the Carrier, by letter dated May 17, 1994, notified the Claimant that he was dismissed from service for late reporting and falsification of an alleged personal injury.

On March 28, 1994, the Claimant was employed as a Trackman on Gang 9068. While he was a passenger, along with Assistant Truck Driver Schaefer, in a half ton truck driven by Truck Driver David Scott, a collision occurred when the brakes on the truck failed.

As the truck entered an intersection, a Subaru station wagon collided with the truck, causing injuries to the driver and the passenger in the station wagon. When the collision occurred all of the occupants in the truck were wearing seatbelts.

After the accident, General Systems General Manager Larry Mesick received assurances from the occupants in the truck, that they had not been injured. Accordingly, the Claimant went back to work on Gang 9068. During the remainder of March 28 for the next two days the Claimant worked as a Laborer. The work included "pulling spikes * spiking down ties *** hitting on anchors, hitting anchors off, getting ties pulled out, knockin' plates off."**

While performing such manual labor, the Claimant reported no problems or injury arising out of the March 28 accident. During this period of time the Claimant was interviewed by a Carrier Claims Agent and reported that he did not suffer any injuries.

On April 2, 1994, the Claimant went to a Hospital emergency room, complaining of neck and back pain. The following day, April 3, the Claimant paged General Foreman C. Torres, Supervisor of Gang 9083. The Claimant had bid to that gang. According to Torres, the Claimant inquired about the gang's workday and hours. On April 4, 1994, Torres called the Claimant's home and was told by his mother that he had gone to the doctor because of problems with his back.

Torres again called the Claimant on April 5, at which time he told Torres that he suffered an injury to his back resulting from the March 28 accident. The next day, Torres went to the Claimant's home with an accident report form. The Claimant filled out the form, while stating that the injury to his back occurred on March 27, 1994. Apparently, he meant the date of March 28.

On April 18, 1994 the Carrier sent the Claimant a Notice of Charges and Investigation. Subsequent to the April 28, 1994 Hearing, the Carrier sent the Claimant a letter dated May 17, 1994 in which he was notified that he was dismissed from service for "late reporting and falsification of an alleged personal injury."

After carefully examining the record, this Board concludes that there is substantial evidence to find that the Claimant was not injured as a result of the accident which occurred on March 28, 1994. This conclusion is supported by several factors.

Immediately after the accident, the Claimant told several Supervisors and fellow employees that he was not injured. For the remainder of the day following the accident, the Claimant performed the work of a Laborer. It was manual work and considered to be "hard labor." The demanding physical work which the Claimant performed as a Laborer for the remainder of the day subsequent to the accident and the next two days warrants the reasonable inference that the accident did not cause him to suffer an injury.

On the days after the accident the Claimant told a Claims Agent that he had not been hurt as a result of the accident. Such assurance by the Claimant was consistent with the statements he made immediately after the accident.

According to the Claimant, the truck that he was in was "jolted pretty good" by the station wagon on March 28. Shaeffer, who was in the front seat of the truck said that "it didn't seem" that the truck was "hit really hard enough" to cause any movement inside of the cab of the truck to cause injury to any of the occupants. This Board is persuaded by the testimony of Shaefer in light of the assurances by the Claimant immediately after the accident, that he was not hurt and that he performed hard labor for the next two days without complaint.

On April 2, 1994 the Claimant who was off work, went to the Emergency Room of a Hospital complaining of neck and back pain. However, he spoke to Torre on April

3 inquiring about the workday and hours of the new gang to which he bid. The record discloses that the Claimant did not disclose to Torre that he had sought medical assistance in the Emergency Room during the previous day. By failing to do so and by seeking information with respect to the work hours of the new gang, the Claimant's story with respect to his back injury arising from the March 28 accident is called into serious question.

There is also the telephone conversation between Torre and the Claimant's mother on April 4 which must be considered. Although the Claimant's mother told Torre that the Claimant had gone to visit a doctor with respect to his back injury, there was no medical documentation to confirm a visit by the Claimant with a doctor on April 4.

The Claimant notified the Carrier for the first time on April 5 that he sustained an injury to his back which resulted from the March 28 accident. Thus, one week after the accident, the Carrier was first apprised by the Claimant of his back injury. Based upon the record, there was substantial evidence for the Carrier to believe that the Claimant's injury was not caused by the March 28 accident.

Assuming that an injury to the Grievant's back was caused by the accident, he failed to report the injury in a prompt manner. The time that elapsed between the accident and the injury was one week. As stated in Third Division Award 19298.

*"Prompt reporting of injuries is necessary and extremely important. It is set forth in the rules and it is a reasonable requirement **."*

It is sufficient to state that providing notification to the Carrier one week after the accident is in excess of a reasonable time.

Finally, the Organization contends that the Hearing Officer violated the Claimant's right to a fair and impartial Hearing in accordance with Rule 48 (a) because of leading questions designed to elicit unfavorable testimony against the Claimant. This Board has carefully reviewed the entire record. Although there are a few occasions when the Hearing Officer asked leading questions, this Board concludes that in light of the entire record, the Claimant was not unduly prejudiced by the conduct of the Hearing

Officer. The Board finds that the Claimant was given a fair and impartial Hearing in compliance with Rule 48 (a).

Based upon the record in this case, the Board finds no justification to disturb the Carrier's decision. The Carrier's action is sustained.

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 13th day of November 1997.