

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31626
Docket No. SG-31875
96-3-94-3-199**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

Claim on behalf of D.B. Flowers for reinstatement to service with all rights and benefits restored and with payment for all lost time, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it imposed the harsh and excessive discipline of dismissal against the Claimant without meeting the burden of proving its charges against the Claimant during an investigation held on March 16, 1993. Carrier's File No. Sig D93-6. General Chairman's File No. SWGC-581. BRS File Case No. 9269-SP."

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.

On December 28, 1992, Claimant was working on a pole. It was raining while Claimant was on the pole. A Lead Signaller was present on the ground. Around 10:47 A.M., Claimant's belt slipped. After unsuccessfully attempting to restore the belt to its correct position, Claimant, pursuant to the Lead Signaller's instructions, dropped the belt down and came down from the pole. Around 11:30 A.M., Claimant and the Lead Signaller went to lunch. Claimant advised the Lead Signaller that he wanted to go home. Claimant went home around 12:15 P.M.

During the evening of December 28, 1992, Claimant telephoned the Signal Supervisor from a hospital emergency room. He advised the Supervisor that he had injured his back at work. The following day, the Supervisor brought the appropriate paper work to Claimant's house.

On January 4, 1993, Carrier directed Claimant to appear for an Investigation on January 12, 1993. The notice charged Claimant with violating Rule 607 by "reporting a fictitious personal injury on 12-28-92." The Investigation was postponed to and held on March 16, 1993. Claimant was found guilty of the offense and dismissed from service. On December 23, 1993, Claimant accepted a leniency reinstatement without prejudice to his pursuit of this claim.

The Organization contends that Carrier failed to prove that Claimant did not injure his back while on duty. The Organization argues that it was raining while Claimant was working on the pole, that he slipped four times, and that he reported to the Lead Signaller that he was wet, miserable, and hurting all over. The Organization maintains that Claimant did not fill out an accident report immediately because he did not think that the incident was serious. However, as he drove home, the pain localized in his back and as the day and evening progressed, the pain became increasingly unbearable, thereby sending Claimant to the hospital emergency room. In the Organization's view, Carrier failed to prove that the facts were not as Claimant related.

Carrier contends that it proved Claimant's guilt by substantial evidence. Carrier argues that the Lead Signaller testified that Claimant did not state he was hurting all over, but instead reported only that he was wet and miserable when he asked to go home. Carrier further observes that Claimant and the Lead Signaller spent a considerable amount of time together eating lunch, during which Claimant exhibited no signs of pain or discomfort. Carrier also maintains that there are inconsistencies within Claimant's story and between the accident report that Claimant completed and the documentation from the hospital.

The Board has reviewed the record developed on the property carefully. We sit as an appellate body. We do not find the facts de novo. We are bound by the factual findings made on the property, provided that they are supported by substantial evidence.

Claimant testified that the rain was the worst rainstorm he had ever experienced and that he was shocked that he was required to go up a pole in those conditions. He further testified that he slipped four times and that when he came down, he told the Lead Signalman that he was wet and miserable and hurting all over.

The Lead Signalman testified that there was a light rain when the Claimant climbed the pole and that at times the rain stopped and at other times it was heavier, but never a very heavy rain. He further testified that when the Claimant came down, he was angry about having to work in the rain and stated that he was wet and miserable and wanted to go home. The Lead Signalman testified that the Claimant did not say that he was hurting and exhibited no signs of pain or discomfort. Furthermore, the Lead Signalman testified that he saw no activity by the Claimant that could have resulted in an injury to the Claimant.

In his closing statement at the Investigation, the General Chairman argued that the matter came "down to one man's word against another." We agree that this matter turns on the relative credibility of the Claimant and the Lead Signalman. As an appellate body, we defer to the credibility determinations made on the property unless they are against the clear weight of the evidence. In the instant case, the Lead Signalman's testimony was corroborated by the Signal Supervisor who testified that the rain was moderate. The Signal Supervisor further testified that at approximately 12:15 P.M. on December 28, he spoke with the Lead Signalman who reported that the Claimant had gone home because he was wet and miserable and, in response to the Signal Supervisor's inquiry, specifically stated that the Claimant had not been injured.

In contrast, the Claimant's testimony was inconsistent. In explaining why he reported to the hospital that the time of his injury was 3:00, he stated that it was at that time that he began noticing that the pain was in his back. At another point, however, he testified that he felt the pain localizing in his back as he was driving home, i.e., considerably earlier than 3:00. Consequently, we see no reason to disturb the credibility determinations made on the property. Accordingly, we find that the finding of guilt is supported by substantial evidence and that the claim must 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 29th day of August 1996.