

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35870
Docket No. MW-35654
01-3-99-3-586

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (suspension from service and subsequent dismissal) imposed upon Mr. B. C. Espinoza for alleged violation of Union Pacific rule 1.6 and 1.13 concerning an injury report dated March 4, 1998 and back hardening class on March 17, 1998 was arbitrary, capricious, based on unproven charges and in violation of the Agreement (System File D-98-26D/1147493D DRG).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered commencing on March 18, 1998 and continuing until such time as he is restored 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 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.

At the time of his dismissal, the Claimant had some 24 years of service as a Track Laborer. For purposes of this dispute, his service record was essentially clear of significant prior discipline.

Our review of the record discloses no significant deficiencies in the procedural handling of the matter. The Claimant was timely given notice of the Investigation. The notice cited the specific Rules, by number, that formed the focus of the Investigation and the accompanying text adequately informed the Claimant of the nature of the Investigation. The Investigation was timely held.

The events leading to the discipline arose on March 4, 1998. At approximately 2:15 P.M. that day, as the Claimant and his co-workers were nearing the end of their shift, the Claimant reported to his Foreman that he had a sore back and tightening of his back muscles. His Foreman relayed this information to a Track Supervisor who was present. When asked about his complaint, the Claimant's responses were to the effect that he did not want to report a personal injury and did not want to fill out a personal injury report form. In a later telephone conversation between the Claimant and a Director of Track Maintenance that same date, the Claimant also responded negatively when asked if he had been injured. Nonetheless, the Claimant submitted a Carrier form entitled REPORT OF PERSONAL INJURY OR ILLNESS. As completed, the form purported to claim an injury occurring at the same date and time the Claimant verbally disavowed. The report is dated March 4, 1998, the same date as his verbal denials. The Claimant worked the remainder of the workweek at lighter duties. He took vacation during the week of March 9-13, 1998.

The Carrier arranged for the Claimant to undergo physical therapy for back hardening beginning on March 17, 1998. The therapy was preceded by a physical examination by a Carrier physician on March 16. The Claimant exhibited no back symptoms and had no complaints of pain during the exam. Nevertheless, the doctor wrote him a prescription for a regulated analgesic, Relafen, which, if filled, would constitute medical treatment and require the episode to be treated as a reportable injury. It is not clear from the record whether the Relafen was prescribed for the Claimant's back pain or for a pre-existing shoulder injury dating from October 1997. After discussions with his Supervisor about having the prescription filled, the Claimant requested the doctor to recommend an over-the-counter analgesic, Aleve, instead.

The Claimant's Supervisor also informed the Claimant to report back to work on March 17 if he finished the back hardening therapy before 1:30 P.M. According to the record, the Claimant was released at approximately 12:15 P.M. but did not report for work as directed. In later discussions with the Supervisor, the Claimant was informed about the apparent conflict between his verbal statements on March 4 and the information contained on the Personal Injury report form. He was provided several opportunities to change the form but declined to do so.

As we have said many times, the Board does not sit to weigh evidence and second-guess the Carrier's disciplinary determinations. Instead, our role is limited to reviewing the record developed by the parties during their handling of the matter on the property to ascertain only whether substantial evidence exists in that record to support the

Carrier's action. While this record is susceptible to a contrasting interpretation, our review also discloses substantial evidence supporting the Carrier's determination. That evidence permitted the Carrier to conclude that the Claimant was culpable on both charges of misconduct. Given the nature of the falsification charge, dismissal is an appropriate disciplinary penalty notwithstanding long years of service. See, for example, Second Division Awards 8524 and 9432 as well as Third Division Award 31917.

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 18th day of December, 2001.