

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36172
Docket No. SG-36243
02-3-00-3-481

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

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

Claim on behalf of V. J. Oleson for reinstatement to service with compensation for all lost time and benefits in connection with his dismissal on September 3, 1999, and to have all reference of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 68, when it dismissed the Claimant without a fair and impartial investigation, and imposed harsh and excessive discipline against him without meeting the burden of proving the charges against him. Carrier's File No. 1197770-D. General Chairman's File No. SWGC-2032. BRS File Case No. 11232-UP."

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 was charged with and found guilty of falsifying a Personal Injury report. He had some 14 months of service at the time of his dismissal.

The Organization raised two procedural objections to the discipline. First, it takes exception to the absence of any Rule citation in the notice of charges. Second, it maintains that the timing of the charge violated the 15-day time limit of Rule 68. Our

review of the Agreement and the record fails to disclose sufficient support for these objections.

Rule 68 does not mandate the listing of possible Rule violations by Rule number in the notice of charges. It requires only that the affected employee be notified in writing "... of the specific charge or charges against him. . . ." The notice here did satisfy that requirement. It apprised the Claimant that the Investigation would inquire into whether he "... allegedly falsified Personal Injury Form 52032 dated July 26, 1999."

Regarding the timeliness of the notice, the Organization maintains that the Claimant's Supervisor had knowledge of the falsification in July. The Claimant's Supervisor testified that he had knowledge on August 3, 1999; therefore, the notice of charges dated August 17 was in compliance with Rule 68.

Although it is clear from the record that the Claimant's Supervisor was aware of the uncertainty surrounding the Claimant's injury, the record does not establish that he knew of a possible falsification in the month of July. Indeed, it is undisputed in the record that he did not receive the Claimant's Form 52032 until August 2, 1999. It is also clear that the report was the first time the Claimant maintained that his injury of "on or about" the previous April 19, 1999, was a work-related injury. Even if the Supervisor is deemed to have knowledge of the falsification as of August 2 instead of August 3, the notice of charges dated August 17 was still in compliance with the 15-day time limit of Rule 68.

Turning to the merits, our review of the record reveals highly unusual circumstances surrounding the claimed injury. The Claimant did not complete the injury report form until July 26, 1999. It claimed a work-related injury occurring "... on or about 19 April 99. . . ." A question mark was placed in the box calling for the time of day. For how the incident occurred, the Claimant began his explanation with, "I believe I was. . . ." When asked for the cause, the Claimant's sentence began, "I believe it was. . . ." At the Hearing, the Claimant was equally equivocal about the specifics of his alleged on-the-job injury.

The Claimant's Foreman testified that the Claimant told him he did not know how his injury happened. Four other co-workers testified that the Claimant said the injury did not happen on the job. Another testified that the Claimant said "... he wasn't sure whether it happened on the job or off the job." A sixth described the Claimant as performing very physical work with no apparent problems on July 7, which was the same day the Claimant was talking about being injured.

Our review of the record discloses substantial evidence in support of the Carrier's finding of guilt. Given the nature of the conduct involved, we do not find the penalty of dismissal to be an abuse of the Carrier's discretion.

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 20th day of August 2002.