

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39960
Docket No. SG-39374
09-3-NRAB-00003-060267
(06-3-267)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Belt Railway of Chicago**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago:

Claim on behalf of J. J. Mullen, for reinstatement to service with seniority unimpaired and compensation for all lost time and benefits, with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when it failed to provide a fair and impartial investigation and then issued the harsh and excessive discipline of dismissal against the Claimant without meeting its burden of proving the charge in connection with an investigation held on May 26, 2005. Carrier’s File No. 05-16-BRC. General Chairman’s File No. 05-16-BRC. BRS File Case No. 13446-BELT.”

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.

Claimant J. J. Mullen entered the service of the Carrier on February 7, 2005. At the time of this dispute, he was working as an Assistant Signal Maintainer.

By notice dated May 23 the Carrier instructed the Claimant to appear for an Investigation to be held on May 26 for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged falsification of a personal injury that he stated to Company officials occurred on or about 2:30 P.M. during his tour of duty on May 18, 2005.

In a letter dated June 1, 2005, the Carrier informed the Claimant that he had been found guilty, as charged, and that he was dismissed for violating the following General Code of Operating Rules: 1.1-Safety, 1.2-Personal Injuries and Accidents, 1.4-Carrying Out Rules and Reporting Violations, 1.6-Conduct, and 1.13-Reporting and Complying with Instructions.

The Organization appealed the Claimant's dismissal on the property in the customary manner. Following a discussion of the dispute in conference, the positions of the parties remained unchanged. Hence, the claim was appealed to the Board for adjudication.

The events that precipitated the Claimant's dismissal are not in dispute. The Claimant worked on May 18, 2005 and left work at the end of his tour of duty at approximately 4:50 P.M. At approximately 5:40 P.M., Signal Supervisor M. Ferguson was told that the Claimant had returned to the property and was alleging that he had sustained an injury on the job earlier that day. Ferguson spoke to the Claimant, who stated that while he was working, between 2:00 P.M. and 3:00 P.M., co-worker T. Flannery, an Assistant Signal Maintainer, had accidentally struck his left eyebrow with a pry bar while removing brake shoes. The Claimant said that initially he had not realized that he was bleeding, but when he stopped at a gas station after leaving work, he took off the bandana that he had been wearing and

saw that he was bleeding. In interviewing the Claimant, Ferguson observed that the Claimant had traces of blood on his hands and a small band-aid over his left eyebrow. Ferguson asked to see the cut and testified that upon examination, it was not bleeding and did not appear to be swollen. Thereafter, Ferguson questioned the employees who were working with the Claimant at the time in question, and he concluded that the Claimant had lied about his injury. The disciplinary charges ensued.

The Carrier contends that the Claimant did not sustain an on-the-job injury. T. Flannery, whom the Claimant accused of hitting him with a pry bar, denied that any such incident occurred. Although the Claimant had told Ferguson that another co-worker, Signal Maintainer T. Quinn, was working with him at the time of the injury, Quinn reported that he never saw the Claimant being struck. Assistant Foreman P. Rizzo, who was on duty the afternoon of May 18, stated that he had no information that anyone had been struck or injured at the time in question. Likewise, Signal Maintainer T. O'Connell gave a written statement that he observed the Claimant from a distance of five to ten feet when they were cleaning up at the end of their tour of duty, and he did not see any blood on the Claimant's forehead.

Based on the foregoing, the Carrier argues that the Claimant falsified his story about being hit with a pry bar on the job. Moreover, the Claimant's story was inconsistent in that initially he said he was unaware he had been hit until three hours after the incident, but at the Hearing he testified that he "had a headache since the hit." In the Carrier's view, the Claimant's report lacked the ring of truth and was never corroborated by any other employee.

The Organization contends that the Carrier failed to sustain its burden of proof. In its view, the Claimant's story was entirely plausible. At the Hearing, he testified that employees routinely get bumps, scratches and burns, and that when he was hit, he thought it was just another bump or scratch. It was not until later, on his way home, that he removed his bandana and noticed blood. Undisputedly, Ferguson saw blood on the Claimant's hands and a band-aid on his left eyebrow when the Claimant returned to work to report his alleged injury. The Organization asserts that it was not strange that the Claimant did not immediately realize that he

had been injured. The blow from the pry bar was not forceful, and the Claimant's bandana acted as a bandage absorbing any initial bleeding.

The Organization submits that the Claimant acted properly by returning to work to report his injury and complete an accident report. According to the Organization, the Claimant was disciplined because he sustained an on-the-job injury, thereby ruining the safety record of the employees under Ferguson's supervision. In fact, based upon the Claimant's testimony, the Organization asserts that Ferguson actually attempted to persuade the Claimant to not file the accident report in order to keep his safety record intact without any blemishes.

In further support of its position, the Organization contends that the Claimant's injury occurred because the wrong tool was being used to work on the brake shoes. Witnesses testified that there were definite safety advantages to using a curved bent pinch bar for installing brake shoes, rather than a straight bar, and the straight bar that caused the injury "was only a couple of inches away from the Claimant's head during the installation."

The Organization further submits that because the Claimant was a new employee, it was unfair for the Carrier to have expected him to be fully familiar with all of its Rules. He was charged with violating GCOR Rules that he could not reasonably have learned in just three months on the job.

After carefully examining the record, the Board concludes that there is substantial evidence to conclude that the Claimant was not injured as he alleged. This conclusion is supported by several factors.

First, the Organization's arguments regarding the Claimant's lack of familiarity with all of the Carrier's Rules, and the advantages of using a straight bar rather than a curved bent pinch bar for installing brake shoes, are without merit. While the Organization suggests that these were mitigating factors, they are just extraneous issues that have no bearing on the key question in this case, that is, whether the Claimant falsified a story about being injured by a co-worker on the job.

The credible testimony in the record supports the Carrier's determination that the Claimant did not tell the truth as to how he sustained a cut over his left eye. While the Organization contends that Supervisor Ferguson had a vested interest in finding the Claimant guilty, the fact is that Ferguson had good reason to doubt the Claimant's story. The Claimant asserted that he was struck with a pry bar but never knew he had been injured until three hours later when he realized he was bleeding. But no employee who worked with the Claimant, or who saw him before he left work, corroborated his story. Flannery vehemently denied hitting the Claimant, and Quinn, who was also working with the Claimant at the time at issue, stated that he never saw the Claimant being struck with anything. O'Connell stood only a few feet from the Claimant when the Claimant was cleaning up at the end of his shift, and O'Connell reported that he saw no blood on the Claimant's forehead. It is difficult to believe that if the Claimant had really received a blow to his head that no one would have seen it occur or noticed a bruise thereafter.

Moreover, the Claimant's story lacked the ring of truth. He stated that he did not know he had a cut until he removed his bandana at the gas station and saw blood. But he also testified that he "had a headache since the hit." Those two statements are inconsistent. Furthermore, if he had truly been struck with a straight bar, it is reasonable to assume that he would have felt the blow and checked his condition promptly, especially since, if he is to be believed, the hit was forceful enough to have broken the skin over his eye. The fact that he waited hours to report the alleged injury, and that he returned to the property because he was "bleeding" and felt he "might need stitches," raises genuine doubts about the truthfulness of his story. Moreover, when Ferguson looked under the Claimant's band-aid, the cut was neither bleeding nor swollen.

The Claimant received a fair Hearing. No procedural objections were made, and the Claimant's representatives stated at the conclusion of the Investigation that the Hearing had been conducted in a fair and impartial manner. Falsification of an on-the-job injury is a serious offense. Here, the Claimant not only falsely accused a co-worker of injuring him, but also destroyed the trust that is vital to the employer-employee relationship. The weight of the evidence supports the conclusion that the Claimant lied. Therefore, the Carrier did not abuse its managerial discretion in terminating the Claimant's employment.

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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 30th day of September 2009.