

## PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) That the Carrier's decision to suspend Claimant Fountain from service for thirty (30) days after investigation September 15, 1989 was unjust.

(2) That the Carrier now lift the suspension from Claimant Fountain's record as a result of investigation held September 15, 1989, because the Carrier did not introduce substantial, creditable evidence that proved that the claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, a suspension of thirty (30) days is extreme and harsh discipline under the circumstances.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Chicago, Illinois on August 30, 1989 to develop the facts and his responsibility, if any, in connection with possible violation of General Rules B, 1007, 1018 and 1026 of Safety and General Rules for All Employees, Form 2629 Standard, April 1, 1988, concerning his allegedly filing a false report of injury, Form 1421 Standard, concerning an alleged injury on July 18, 1989.

The investigation was postponed at the request of the General Chairman and was held on September 15, 1989. Pursuant to the investigation the claimant was suspended for thirty days for filing a false report of injury Form 1421 Standard, concerning an injury on July 18, 1989.

The claimant testified that he called the Dispatcher and was waiting for a couple of trains to run for, and they went down the main line to renew ties, and while they were waiting for the trains, he saw the guy that was running the spiker. He testified he was loading up some spikes, and he went to help him.

The claimant testified he was running the hoist for the cable as he let it down, and he hooked the kegs of spikes and swung them over to where he needed them dumped in his trays and knocked the lids off with a hammer and dumped the spikes. He stated he would then lower the hoist and get another keg. He stated it was right after the last keg when he was knocking the lid off or doing something with the spikes, and he was standing at the northeast corner of the back of

the machine and had one foot up slightly higher than the other, when he turned to the left, coughed a couple of times and felt something on his back snap or pinch which about knocked him to his knees. He stated he felt pain in his hip, a tightness in his hip, and he walked around trying to loosen up the stiffness.

The claimant testified that when he finished on the main line at approximately 11:00 o'clock he noticed the pain was still there and he told Mr. Flannery something had happened to his back. He asked where Mr. Cueves was so he could talk to him about it. He stated that later in the day he saw Mr. Cueves and explained what had occurred to him.

The claimant was asked if he ever notified anyone that he wanted to claim an injury. He testified he did not fill out Form 1421 Std. but that Carl Ratner filled it out. The Form 1421 was filled out on July 28.

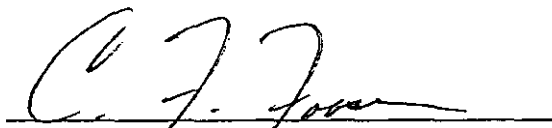
Dave Cueves, Track Supervisor, testified that on July 18 he drove to Edelstein Hill where the claimant was working. He asked him what had happened, and the claimant stated he didn't know -- he turned his head and coughed twice and felt pain in his back. He testified he asked the claimant if he wished to seek medical attention or see a doctor. He testified the claimant again told him he didn't know for sure what had happened, that it might be the weather affecting him and also said he had some exercises he had been doing, and he felt all he needed to do was go home and do some exercises.


After reviewing all the evidence of record, the Board finds there is no justification to set the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

*Signature and dated at Chicago, Ill.  
October 30, 1989*

  
Union Member

  
Carrier Member