

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 Southern Region Trackman T. G. Greer from service for 10 days and a deferred suspension of 20 days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of investigation held 9:00 a.m., January 12, 1994 continuing forward and/or otherwise made whole, 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, suspended from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the claimant violated the rules enumerated in their decision.

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 Oklahoma City on January 7, 1994 regarding his allegedly reporting late and possible falsification of personal injury which he claimed occurred on December 10, 1993 at MP 505 on Oklahoma Subdivision and reported on December 14, 1993, and for his alleged absence from duty without proper authority on December 13, 1993, and to determine all the facts and his responsibility, if any, involving possible violation of Rules A, B, E, I, 1004, 1007, 1017 and 1024, Safety and General Rules for All Employees, effective June 30, 1993.

The investigation was postponed until Wednesday, January 12, 1994. Pursuant to the investigation the claimant was assessed a Level 3 suspension of 10 days effective January 17, 1994 for falsification of a personal injury claim and his absence from duty without proper authority on December 13, 1993, and a deferred suspension of 20 days for his infraction of Rules A, B, E, I, 1004, 1007, 1017 and 1024, Safety and General Rules for All Employees, effective June 30, 1993.

The Union filed a claim alleging that the Carrier failed to introduce substantial, credible evidence that proved the claimant violated the rules enumerated in their decision.

Marcus Moore, Section Foreman of the Ardmore Section where the claimant worked, testified that the claimant did not have permission to be absent from work on December 13, 1993 nor did the claimant advise him he would be absent from work on that date.

Foreman Moore also testified that the claimant called him on December 14, 1993 and advised him that his back was hurting him and he was thinking of going to the doctor. This witness also stated the claimant told him that morning on the phone that his back had been bothering him for about a month.

Foreman Moore further testified that the claimant advised him during this phone call that he might have hurt his back changing out a rail at MP 506 on Friday, December 10, 1993. Also this witness testified the claimant did not tell him where he was on Monday, December 13. Foreman Moore also stated that the claimant had not mentioned anything prior to that time about December 10.

Foreman Moore then testified that on December 10 his crew changed out two rails -- one at MP 498 and one between MP 505 and MP 506. He also testified that on December 14 he met with the claimant and gave him his phone number and told him to contact the Roadmaster.

William Barnett, Roadmaster at Oklahoma City, testified that he had jurisdiction between Britton Road in Oklahoma City to Gainesville, Texas. He testified the claimant called him on December 14, 1993 at approximately noon and advised him he had injured his back and was going to the doctor that afternoon.

Roadmaster Barnett further testified that the claimant advised him he injured his back when they cut two rails on Friday, December 10. He also testified the claimant told him he had an appointment with Dr. Shauff (phonetic) at 4:45 p.m. in Gainesville.

Roadmaster Barnett testified that after he talked on the phone with the claimant, he drove to Gainesville and arrived there between 4:15 and 4:30 p.m. He stated he talked to the claimant at that time about the incident involving an injury and filled out the injury report. He testified the claimant told him at that time he had hurt his back while lifting the rail drill out of the middle box on the right hand side and that the injury had occurred at approximately noon on Friday, December 10.

This witness further testified that he did not give the claimant permission to be absent from work on December 13, 1993. He also testified that he asked the claimant why he did not report the injury on Friday, the 10th, and he said that he felt like it might get better.

Roadmaster Barnett testified that when he asked the claimant why they had no communication from him on Monday, the claimant said he didn't know but then said he did try to call and couldn't get hold of anybody. Mr. Barnett testified that the claimant had indicated to Foreman Moore earlier that he had tried the 800 number, and it was out of service, and he then tried the 800 number, and it was not out of service.

The claimant, Trackman/Machine Operator T. G. Greer, testified that during the month prior to December 14, 1993 he was working as a Trackman in the Ardmore Section. The claimant testified he was not sure if he mentioned anything about being hurt for a month. The claimant stated he had been hurting but he didn't remember telling him about it. When asked if his back had been bothering him in the month or so prior to the date he called Section Foreman Moore, the claimant stated: "We've been changing out rail every day for a couple of weeks, and yeah, it gets sore every day."

The claimant was asked why if he injured his back on December 10 he did not report the injury to his Foreman or Roadmaster prior to the tour of duty that day. (At this point it is noted that the claimant could not report an injury occurring on that date prior to the tour of duty.) Apparently the claimant understood the question as to why he did not report the injury that day since he answered: "I figured it would just get better over the weekend, and it'd be no problem."

The claimant was then asked why he did not report the injury to Foreman Moore on Monday, and he stated he did all he could do. The claimant was again asked why he had not reported the injury to his foreman, and he stated he wasn't complaining, that they all had minor injuries that they didn't claim.

The claimant testified they were changing out a rail near MP 505 and while he was unloading the tools, the drill and all the materials, he felt a pain in his back, and at that time he was unloading a drill from the back of the truck.

The claimant testified that he was unloading the drill by himself, but usually two people would get up there and unload it. The claimant testified he had never been told by Foreman Moore to get help when loading or unloading something which was heavy or hard to handle. The claimant stated Foreman Moore never mentioned it, and he knew when he needed help lifting something heavy. The claimant stated he could have prevented the injury by asking for more help or by staying home.

The claimant testified that on December 14 he decided to go to a doctor, and the doctor determined he had a back strain and prescribed pills and therapy. The claimant stated he took the medication for two weeks.

The claimant again stated that he may have said something to Mr. Moore about his back bothering him for a month. He further stated he had just seen the doctor once, and after that he had seen the therapist.

The claimant then stated he removed the drill from the back of the truck, and when questioned again, he stated he did not know whether it was from the back of the truck or from the box in the back of the truck.

Roadmaster Barnett was recalled, and he stated that on December 14 the claimant told him he removed the rail drill from the side box, which is out of the box, and he was up in the bed of the truck.

Section Foreman Moore was recalled and testified that during his conversation with the claimant on December 14, the claimant did not mention that he was handling a rail drill or anything like that when he hurt his back.

Foreman Moore had also made a report on December 14 regarding the incident in which he stated he could not swear the rail drill was setting on the tail gate of the truck, but the claimant had been told to get help when loading and unloading the drill or anything that was heavy or hard to handle.

Foreman Moore also testified that at no time during December 10 did the claimant say anything to him about an incident of injury that would cause his back to hurt him. He further stated that the claimant did not mention anything about hurting himself handling a rail drill nor did the claimant appear to be in pain.

The Board has reviewed all the testimony of record and finds that the Carrier was justified in finding that the claimant was guilty of violating Rules A, E, I, 1004 and 1024. A violation of those rules justifies the discipline assessed by the Carrier.

AWARD: Claim denied.

*Date at Schaumburg, Ill.
February 24, 1944*

Preston J. Moore
Preston J. Moore, Chairman

C. J. Zuer
Union Member

L. L. Pope
Carrier Member