

PUBLIC LAW BOARD NO. 1760

Award No. 137

Docket No. 137

Carrier File MW-DECR-91-52-BB-334

Parties     Brotherhood of Maintenance of Way Employees  
to           and  
Dispute     Norfolk and Western Railroad Company  
              (former Wabash)

Statement

of Claim: Claim on behalf of M. D. Riley requesting that he be reinstated with all rights and privileges and be paid for all time lost as a result of his dismissal in connection with providing false statements concerning report of an on-duty injury on August 28, 1991.

Findings:     The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

The Claimant, Lead Carpenter, Michael D. Riley, was notified under date of September 27, 1991:

"... to report to the B&B Supervisor's office at Moberly, Missouri, 1:00 PM, October 7, 1991, for a formal investigation. The purpose is to determine your responsibility, if any, in connection with your 'providing false statements concerning your report of an injury on August 28, 1991, in that you notified a fellow employee that you hurt your back, when the incident allegedly occurred."

As a result of the postponed investigation that was held on October 9, Carrier concluded the Claimant to be culpable. He was dismissed from service as discipline therefor.

The Board finds that the Claimant was accorded the due process to which entitled under Rule 30. The investigation was timely held within the thirty (30) days. The time limit commenced running the day following Carrier's first knowledge of the necessary information, which the record reflects that as being September 11th when the last written statements from four co-workers were obtained. The investigation was held 27 days thereafter. On this aspect the issue is not when the Carrier had knowledge as to the Claimant's injury but rather when it had knowledge as to the falsification thereof. That occurred on September 10 and 11.

The Claimant had alleged that he was injured on August 28, 1991 while handling stiffeners. However, no other employee saw him get hurt which was contrary to the Claimant's assertion. The Claimant's credibility was very much weakened by the evidence offered by the other employees. The Claimant asserted that he allegedly had made a remark to Jimmy Vestal when allegedly injured. Vestal testified that he could not remember any such comment.

Welder Phil Schopp testified that he heard the Claimant speak of needing "quick cash" and "a big chunk of money" or "hitting the N&W lotto" thereby euphemistically referring to a potential suit and a large FELA settlement.


B&B Carpenter Turner testified that the Claimant came to his house the night of the alleged injury and that the Claimant asserted that he had already decided to "go to St. Louis" rather than "messing with a claim agent." St. Louis is the location of attorneys who handle FELA matters for the employees represented by B&WE on the property.


The Claimant told Supervisor Drake and B&B Carpenter Turner that he had asked to be off the afternoon of August 28. However, Assistant Supervisor Medal testified that although Claimant had asked to be off the following Friday, he did not mention being off that Wednesday. The Claimant nonetheless drove his personal vehicle to the job site that day although he seldom ever did this. It was not denied. That circumstantial fact gives credence to the testimony offered of driving to St. Louis, etc. It was noted that Jimmy Vestal testified that the Claimant's physical activities on Labor Day were not the kind of activities that an injured man could or would be doing (T-8).

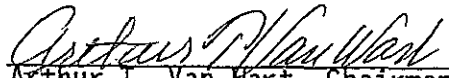
Hence, the testimony lends considerable weight to Carrier's conclusion that the August 28, 1991 report of an alleged on-duty injury was more false than in the fact that an injury had actually occurred.

Dismissal is not unreasonable discipline for an act of falsification of an on-duty injury. That act is a very serious offense. Such proven conduct is in and of itself dishonest and is cause for severe discipline. Dishonest conduct violates a basic tenant to the employer-employee relationship. The Carrier need never be burdened by any such employee. See Awards 7 and 77 of PLB 1838. Awards 33, 34 and 3446 of PLB 3445 on this property are clearly supportive of such findings.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
L. F. Miller, Jr., Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued January 21, 1993.