

PUBLIC LAW BOARD NO. 1760

Award No. 142

Case No. 142
File MWDECR-92-1

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

Statement
of Claim: L. C. Brown - Dismissal - Failure to report and falsifying
 injury.

Findings: The Board has jurisdiction by reason of the parties
 Agreement establishing this Board therefor.

 The Claimant, Machine Operator L. C. Brown, was
 notified to attend a formal investigation on March 19th:

 "To determine your responsibility, if any, in connection
 with your falsification of an injury, in that by a letter
 dated February 24, 1992 this office was informed by our
 claim department that you had instituted a law suit and a
 claim against the railroad company for personal injuries
 arising from an incident on August 8, 1991. Further, in
 that no injury report was filed, you are additionally
 charged with violation of General Rule N and Rule 1000..."

 Carrier concluded therefrom that the Claimant was
 culpable. He was dismissed from service as discipline
 therefor.

 Claimant was accorded the due process to which entitled
 under his discipline rule.

 There was sufficient evidence adduced from the
 investigation to support the Carrier's conclusion of his
 culpability. The record shows that as a result of the
 Claimant's wife calling the Track Supervisor's office to
 advise that Claimant would not be into work because of a
 doctor's appointment on two days, two supervisors went to
 his home to see him and they found him at a cousin's home.
 Claimant advised his supervisors on August 27, 1991 that he
 had hurt his back working on a friend's roof and he
 willingly wrote out a statement to that effect and gave it
 to his supervisors.

 Track Supervisor White was advised that the Claimant
 had retained an attorney concerning an alleged August 8,


1991, on duty injury. Track Supervisor White had no knowledge of said alleged injury. An injury report form arrived at said supervisor's office on March 10, 1992. Thus, with the Claimant's admission that the Carrier's first knowledge would have been through his attorney's contact in February 1992, it is clear that no incident had been reported reasonably timely. Therefore, the Carrier was denied the prompt opportunity to determine the cause and to take any necessary corrective action to prevent any future reoccurrences as well as preparing for any potential liabilities.

Despite the demonstration of Claimant's apparent dishonest action a dismissal award based on the facts in this case might be deemed reasonable. In spite of the demonstration of Claimant's dishonesty he has resigned from all service of the Carrier. His release in part states:


"Case No. MWDECR-92-01-LM-31... he represents that he will request and authorize his collective bargaining agent to cancel, terminate, and withdraw said claim and appeal."

The above withdrawal of the claim occurred after the claim had been presented to the Board. It will be denied on its merits.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member