

PUBLIC LAW BOARD NO. 1760

Award No. 151

Case No. 151
File MW-FTW-92-38

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk & Western Railway Company

Statement

of Claim: Claim on behalf of R. A. Niekrenz requesting reinstatement and pay for time lost as a result of his dismissal for improperly reporting and/or falsifying an alleged on-duty injury of July 11, 1992.

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

The Claimant, on Saturday, July 11, the eighth day of work, was operating a walking spiker on TNS Gang #26. The ES Gang works 8 days on and 8 days off. The Gang was required to tram or travel their machines from Kansas City to Carrollton. Just before the Claimant arrived at Carrollton, a wasp flew at him and in the process of defending the wasp, his hat and glasses fell off and he received some kind of a object in his eye. After tying up his machine he rode in the gang truck to Claycoma and went off duty and traveled back home in his automobile to St. Louis.

The Claimant went into the St. Mary's Hospital for emergency care about 9:00 AM. The hospital removed a foreign body from his right eye and reported that he had a cornea abrasion. While driving home on the 11th, the eye started to hurt him. On Monday, July 13th, the injury was reported to his supervisor's office. The Claimant alleged that at the time he received his eye injury he also sustained a neck injury. However, he failed to notify the Track Supervisor, as instructed, after his treatment on Monday, July 13, that he was seeing another doctor in connection with the neck injury.

Claimant was removed from service and was notified to attend a formal investigation on the charge:

"(1) violation of NS safety and general Rule 1000, for failure to report an alleged on-duty injury, before leaving company premises on July 11, 1992, and also not properly notifying your supervisor when you obtain medical attention (reported two days later).

(2) Falsifying an alleged on-duty injury, which on July 13, 1992 around noon you reported that you sprained your neck while tramping your machine to Carrollton, MO from Kansas City, MO."

Carrier concluded culpability of the charges and 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 to support the conclusion that Claimant was culpable of the charge.

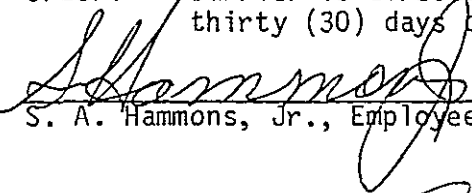
There are circumstances that serve to mitigate the discipline and the Claimant will be reinstated to service will all rights unimpaired but without pay for time out of service. Time out of service should be a reminder that he has an obligation to comply with Rule 1000 if the opportunity to do so should arise in the future. Rule 1000 reads:

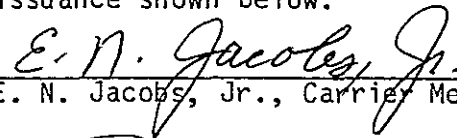
"An employee who sustains a personal injury while on duty must report it, before leaving the Company premises, to his immediate supervisor or to the employee in charge of the work, who will promptly report the facts through channels.


If an employee at any time marks off or obtain medical attention for an on-duty injury or occupational illness, he must promptly notify his supervisor."

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 30, 1994.