

PUBLIC LAW BOARD NO. 1838

Award No. 77

Case No. 77

Carrier File MW-CR-81-45

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

Statement Former employee, H. Fields, Route 3, Box 307-B, Emporia, Va.
of 23847, was dismissed account of allegedly charged with not
Claim reporting personal injury and falsifying statement for
preparation of injury report, October 21, 1980 and July 6,
1981. Employees request Mr. Fields be reinstated and be paid
for any and all lost time, seniority, vacation and all other
rights unimpaired beginning May 12, 1982.

Findings: The Board, after hearing upon the whole record and all
evidence, finds that the parties herein are Carrier and Employee within
the meaning of the Railway Labor Act, as amended, that this Board is
duly constituted by Agreement dated March 1, 1976, that it has
jurisdiction of the parties and the subject matter, and that the parties
were given due notice of the hearing held.

Claimant began service with Carrier on July 14, 1972, as a section
laborer and was working as such on June 22, 1981.

Claimant was dismissed from all service of the Carrier effective
May 12, 1982 as a result of an investigation on November 24, 1981 to
determine his responsibility in connection with failing to report a
personal injury which allegedly occurred on October 21, 1980, falsifying
a statement for preparation of an alleged injury report on July 6, 1981,
and falsifying a statement to Claim Agent Hayth and Roadmaster Tribble
in connection with an alleged injury on July 17, 1981.

Organization premises its appeal on the basis that due to Claimant's limited educational background Claimant did not understand the nature of the questions being asked of him by Carrier's representatives at the time of their interviews. Additionally, Organization contends that it was prejudicial not to have advised Claimant that the statements that he was giving could or would be used against him at a subsequent time.

A fair reading of the testimony contained in the transcript, particularly Claimant's responses to the questions asked at the hearing, fails to support such contention. Claimant clearly understood his actions and the activity he was engaged in. Carrier's witnesses established that Claimant failed to make a timely report of his alleged injury, if it in fact occurred at all. Such was denied by Claimant, but Carrier chose to resolve that conflict in testimony against Claimant.

We find no justification in the record that would warrant a conclusion by the Board that such action was arbitrary or capricious.

Claimant was found culpable for violation of Safety Rule 1001 which, in pertinent part reads:

"Employees must report personal injuries to their supervisor or the designated employee immediately in charge of the work before leaving the Company's premises.

* * *

Failure to report a personal injury by the injured person or an employee in immediate charge of the work may result in disciplinary action.

Every case of personal injury, accident, or damage to property must be reported as soon as possible by the quickest available means of communication and a written report on the prescribed form rendered promptly. Such reports must contain full details and names and addresses of all witnesses and all particulars of the occurrence."

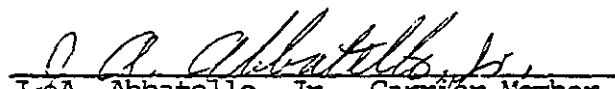
The record is devoid of any evidence that Claimant complied with the mandates of Safety Rule 1001. Claimant did not report the alleged injury until July 6, 1981. The evidence concerning Claimant's medical condition clearly supports the conclusion that Claimant's injuries were the result of an automobile injury sustained prior to his employment, not as a result of any activity that took place on the railroad, contrary to the contentions made by Claimant in his statement to Carrier's claim agent.

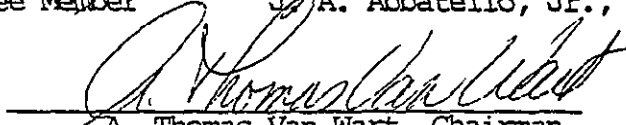
The Board is satisfied that Claimant was ably and aggressively represented throughout, there was sufficient credible evidence adduced at the hearing to support Carrier's conclusion, and in view of the circumstances of Claimant attempting to make a false claim for compensation against his employer for an alleged injury that was supposed to have occurred some time prior and in the course of his employment with Carrier, Carrier's action in dismissing Claimant from all services was wholly warranted.

For the reasons set forth above this Claim will be denied.

AWARD: Claim denied.


Bryce Hall, Employee Member


J. A. Abbateello, Jr., Carrier Member


A. Thomas Van Wart, Chairman
and Neutral Member