

PUBLIC LAW BOARD NO. 2206

AWARD NO. 66

CASE NO. 68

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Laborer, L. C. Rasmussen October 4, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File S-P-196C)
2. Laborer, L. C. Rasmussen be allowed payment for all wages lost and restored to service with all seniority rights and privileges.

OPINION OF BOARD:

In August 1979 Claimant was employed as Section Laborer at Auburn, Washington. He worked a full day on Monday, August 13, 1979, and reported off duty without mentioning or reporting any illness or injury to his supervisors. He did not appear at work on Tuesday, August 14, 1979, but his girlfriend telephoned the Roadmaster's office and reported that he would not be able to work that day because he had hurt his back the night before while moving furniture at their home. According to his later testimony Claimant saw his own physician that day and was advised not to lift anything but was not told he should stay home from work. Nonetheless, Claimant remained off from work for three days until Friday, August 17, 1979, because, according to

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his testimony, he had been having back pain for some three months and it was now troubling him again. Upon his return to work on Friday, August 17, 1979, Claimant told his supervisor that he had injured his back on the previous Monday while pulling on a boxcar door at work and he then filled out a personal injury report of the alleged on-the-job injury to his back.

As a result of the foregoing, Claimant received notice on August 20, 1979 to attend an investigation into his "alleged personal injury" at Auburn on August 13, 1979 which was not reported until August 17, 1979". Following the investigation, at which Claimant appeared and was represented by BMW Vice Chairman Tulburg, he was notified of his dismissal from service for late reporting and false reporting of an alleged on-the-job personal injury. The Organization appealed the discipline on grounds that Carrier fatally erred by not citing in the hearing notice the Carrier rules upon which it found Claimant guilty, for not calling his girlfriend as a material witness at the hearing, and for finding him culpable of late and false reporting of the injury which he steadfastly maintained occurred on the job on August 13, 1979.

Upon review of this record we can find no serious procedural error in the handling of the claim. Failure to cite Carrier rules does not invalidate the notice of hearing. It can hardly be argued that Claimant was uninformed as to the reason for the hearing or prevented from preparing a defense. If he wanted his girlfriend, a non-employee of the Carrier, to testify as a witness on his behalf then he should have provided for her appearance. Finally, upon careful review of the testimony we are persuaded that Carrier had substantial evidence upon which to conclude that he probably did not injure himself at work on August 13, 1979 and if, arguendo, he did so he delayed without justification the proper reporting of that alleged injury.

AWARD

Claim denied.

J. H. Fink
Employee Member

W. J. Hodynsky
Carrier Member

Dana E. Eischen, Chairman

Date: November 30, 1962