

PUBLIC LAW BOARD NO. 2774

Award No. 120
Case No. 120

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Mr. B. K. Snow from the service of The Atchison, Topeka and Santa Fe Railway Company without first according claimant a fair and impartial hearing was in violation of the provisions of the current agreement. Said action being arbitrary, capricious, discriminatory and unsupported by the hearing record.
2. That claimant be reinstated to the service of the Carrier with compensation for all wage loss suffered with seniority and all other rights restored unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein had approximately three years of service prior to his dismissal. Following an investigation held on January 31, 1983, claimant was dismissed being found responsible for misrepresentation of facts, withholding information, malingering, claiming disability and other irregularities subsequent to an alleged injury on November 11, 1982, and falsifying his application for employment. The charges all stem from an injury claimed by petitioner which allegedly occurred on November 11, 1982.

A study of the transcript of the investigation reveals that there was no evidence adduced by Carrier that claimant would not have been hired

- 2 -

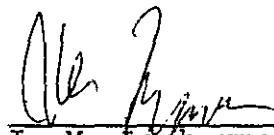
had he not falsified his application for employment. The minor discrepancy found by Carrier obviously was not sufficient under most circumstances to warrant any conclusion that he would not have been hired. With respect to the remainder of the charges, all stemming from the alleged injury, the record does indicate that an injury took place on the date in question. Furthermore, there is no evidence of a substantial order to support Carrier's charges. Had there been doubts with respect to claimant's condition in the course of the progression of this matter, Carrier could, indeed, have insisted that claimant be examined by one of its physicians or one of its choosing. Carrier did not avail itself of that option. Based on these facts, the Board is of the opinion that claimant should be reinstated to his former position but without compensation for time lost but all other rights unimpaired. This reinstatement should be made on the proviso that Snow submits medical evidence that he is currently physically able to perform in his job. It should be noted that to date there is no such evidence of record and, hence, there can be no compensation for Mr. Snow.

AWARD

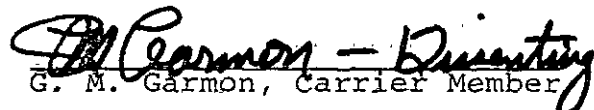
Claim sustained in part; claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost on the condition that he submits medical evidence that he is physically able to perform.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member
G. M. Garmon, Carrier Member

Chicago, IL
December 17, 1984