

PUBLIC LAW BOARD NO. 2774

Award No. 150
Case No. 150

PARTIES
TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current Agreement when, on June 20, 1985, it dismissed Trackman D.F. Swift based on unproven charges, said action being capricious, unwarranted and without just cause.
2. Claimant will now be reinstated to his former position 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.

On April 11, 1985, while working, Claimant was apparently hit by a fellow employee who was wielding a maul. His fellow employee missed the spike which he was attempting to put in and struck Claimant in the lower shin whereupon Claimant jumped backwards in a twisting motion and allegedly suffered a back injury as a result of that movement. Shortly after that incident he reported

the accident to his Foreman but declined medical attention that day and continued to work. On the next work day, the following Monday, as the day wore on, Claimant felt considerable pain and approached the Foreman for medical attention. The Foreman took Claimant to the doctor who confirmed the fact that Claimant had a back strain and suggested that Claimant see his personal physician. Thereafter Claimant was unable to work effectively and starting with April 17, he secured permission to be absent and continued to be on sick leave. By letter dated May 16, Carrier informed Claimant of pending investigation and charged him with alleged misrepresentation of the facts with respect to the alleged personal injury of April 11th. The investigatory hearing was held on June 20, 1985 and upon the conclusion of the hearing, Claimant was removed from service for his alleged guilt of the charge. The record also indicates that Carrier's Claim Department executed a settlement and release for Claimant on April 27, 1986 for the alleged injury. The settlement was for the sum of some \$22,500 and released Carrier from all labor claims for wages as a result of the dispute herein. It is noted that the release, however, did not include pending claims for reinstatement.

Carrier alleges simply that Claimant was found guilty of the charges after a fair and impartial investigation and that discipline was warranted and justified. Carrier's position is

that the back strain was caused by Claimant moving furniture on the weekend following the alleged accident and therefore the accident itself did not cause any injury. For this reason Carrier is convinced that its charge of misrepresentation was an appropriate one.

The Organization, in its testimony and in its argument, indicates that there was sufficient evidence to support the proposition that Claimant was struck by the maul in the course of working and further that he jumped backwards when struck, straining his back. Therefore, since there was no doubt whatever that Claimant was struck and injured his back when he jumped backwards, his claim for on duty injury was appropriate and all of Carrier's actions were to dilute the liability, according to the Organization. The Organization insists that since there was a recognition of the on-duty injury by the Claim Department, it was obvious that the Claimant ought to be reinstated.

As the Board examined the transcript of the investigation, and the entire record of this matter, it is apparent that there is insufficient evidence to sustain the charge levelled against Claimant. There were contradictions between the written statement secured by Carrier and the testimony at the hearing and in

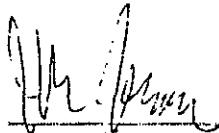
general there is not any convincing substantial evidence to support the charge of misrepresentation. In view of the Waiver signed by Claimant, however, his claim must be restricted to reinstatement. Therefore, the Board concludes that Claimant should be reinstated to his former position with all rights unimpaired but without compensation for time lost.

AWARD

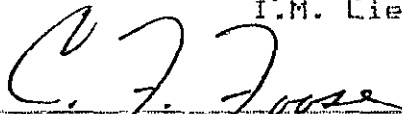
Claim sustained; Claimant shall be restored to his former position with all rights unimpaired but will not receive payment for time lost.

ORDER

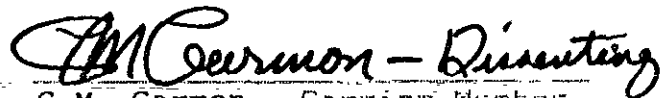
Carrier will comply with the Award herein within 30 days from the date hereof.



I.M. Lieberman, Neutral Member



C. F. Foose, Employee Member



G.M. Garmon, Carrier Member

Chicago, Illinois

January 21, 1988