

PUBLIC LAW BOARD NO. 2774

Award No. 151

Case No. 151

PARTIES
TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to dismiss Machine Operator L.E. Pearson on June 10, 1985 on the basis of unproven charges was in violation of the Agreement, capricious and totally unwarranted.
2. Carrier will now be required to reinstate Claimant to his former position with seniority and all other rights restored, unimpaired and with compensation for all wage loss suffered."

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 January 16, 1985, while working on a tie gang, Claimant testified that he injured his back lifting a 200 lb keg of spikes. He also indicated that he advised his foreman of the injury on that day. He also told his foreman to make a note of it in the pocket time book and asked her to give him a different job because his back was sore. The foreman, Ms. Hamrick, while not recalling the injury does recall taking Claimant off the

particular machine and putting him on a job pulling plates with another machine because his back was sore.

On February 19, 1985, the Claimant visited the Assistant Division Engineer to seek permission for time off to see a doctor. According to Claimant's testimony, at no time did either his foreman or the Assistant Division Engineer suggest that he submit a form 1412 which reports accidents. Ultimately the problem with Claimant's back was diagnosed to have been a herniated lumbar disc. Subsequently, by letter dated April 16, Carrier's Claim Department was notified that Claimant had retained an attorney to represent him because of the on-the-job injury. This was followed by a letter dated May 3rd, addressed to Claimant, advising him to attend an investigation of the charge that he had misrepresented the facts and withheld information with respect to the letter received from his attorney in connection with the incident or injury which he allegedly had received on January 16th. Following the investigation the Claimant was removed from service effective June 10, 1985 for allegedly violating Carrier's rules in failing to provide information and misrepresenting the facts with respect to his on-the-job alleged injury.

Carrier takes the position that Claimant was afforded a fair and impartial investigation and was found guilty of the charges and

properly disciplined. Carrier notes that the testimony by Claimant was in sharp conflict with the testimony of several Carrier officials including his foreman as well as the Assistant Engineer. Those conflicts, according to Carrier, were resolved by the Hearing Officer in favor of the Carrier witnesses. Thus, from the Carrier's standpoint, there was no record whatever of any on-the-job injury which occurred in January and there was no record made because of the lack of any formal notification by Claimant at the time as required by Carrier rules. The Carrier insists that the lost time beginning February 22nd was not caused by an on-duty injury and Claimant fraudulently alleged an injury to secure time off from work with pay. The very failure of Claimant to file Form 1421 the date that the alleged injury occurred was sufficient to warrant discipline and dismissal.

The Petitioner takes the position that the foreman conveniently forgot the conversation with Claimant although she does admit that she assigned Claimant to a different job which did not require heavy lifting because he complained of a sore back. While Claimant testified that he had told the Assistant Engineer that he did not feel the accident was serious enough to make out an accident report (which the Assistant Engineer agreed with) he did indeed inform him of the accident. Thus, Petitioner insists that

Carrier officials condoned Claimant's lack of action in filing the required report. Thus the Organization argues that both the supervisors involved had responsibility and obligation to insure that Claimant complied with the rules in filing the required accident report. Furthermore, the testimony in the transcript supports this version of the incident as reported by Claimant.

A careful examination of the transcript of the investigation provides the Board with useful information with respect to the knowledge of Carrier officials of the incident. It is apparent that both the foreman and the Assistant Engineer were aware that Claimant indeed believed he had injured his back while lifting the keg of spikes. Both officials tacitly admitted this in their testimony, contrary to Carrier's assertions. For this reason, and the fact that both officials condoned or at least did not suggest the filling out of the accident report, there is considerable doubt cast on the nature of the discipline imposed in this case. It is the Board's belief that Carrier in this instance was lax in its responsibility with respect to the accident and petitioner himself was lax in not complying with what he knew were the requirements to file the proper report.

On balance, the Board concludes that the penalty of dismissal was unwarranted in this case. Petitioner should be reinstated to

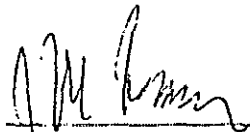
his former position with all rights unimpaired. However, in view of the fact that he does bear culpability in not making the required accident report, he shall not receive back pay.

AWARD

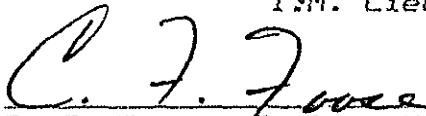
Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the Award herein within thirty days of the date hereof.



I.M. Lieberman, Neutral Member



C. F. Foote, Employee Member



G.M. Garmon, Carrier Member

Chicago, Illinois

January 21, 1988