

PUBLIC LAW BOARD NO. 2774

Award No. 180
Case No. 180

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchison Topeka & Santa Fe Railway Company

STATEMENT "1. That the Carrier's decision to dismiss
OF CLAIM: Mr. F. B. Ortiz was in violation of the
Agreement and was unduly harsh.
2. That the Carrier be required to rein-
state Claimant Ortiz 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.

Claimant herein was a Trackman, having been employed by Carrier on May 30, 1973, and was working in the New Mexico division. Claimant was injured while at work on October 7, 1986 and told his Foreman that he was injured. He did not wish to report the injury at that time because of possible harassment from Carrier

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officers. The record indicates that Claimant's Foreman gave Claimant the following day, October 8, off in order to see a doctor. Furthermore, the doctor made contact with Carrier's office to notify them of Claimant's being there at the time. Following the doctor visit, Claimant was off for an extended period of time with the knowledge of his Roadmaster. He had not asked for an injury report form (Form No. 1421) because he did not know the form by its name or number. His wife attempted to secure a form in order to report the injury and was denied access to the form. Finally Claimant did indeed fill out such a form on March 27, 1987. On May 6, 1987 he was notified to attend a formal investigation for the purpose of developing the facts and circumstances with respect to his alleged falsification of an on duty injury allegedly occurring on October 7, 1986. Following the investigation Claimant was dismissed from service having been found guilty.

Carrier argues that Claimant was properly found guilty of fraudulently claiming an on duty injury which is a dishonest act warranting dismissal. In addition, Carrier notes that Claimant's failure to submit Form 1421 on the date that the alleged injury occurred is also considered a serious a serious infraction, warranting dismissal.

Petitioner insists that everyone knew of the injury which Claimant had incurred but no one wished to make a formal report.

According to the Organization even the Division Engineer's chief clerk testified that she knew of the injury on October 9, 1986 and the Claimant's Roadmaster was also aware of the circumstances since he witnessed a statement from Claimant's Foreman on October 10. Petitioner also notes that the Roadmaster involved refused to come to the investigation since he was retired.

The Board notes that the record fails to substantiate by significant evidence Carrier's allegation that Claimant falsified an on duty injury. The fact of the matter was that the record was clear that Claimant did indeed sustain an injury on the date in question. The fact that he failed to fill out an accident report in prompt fashion was unfortunate and contrary to Carrier's rules, but in part was aided and abetted by lack of action on the part of Carrier functionaries and officials. Furthermore, during the ensuing period Claimant was apparently carried on medical leave of absence until the time of the investigation. The Board also notes that, at the time of the claim being filed against Carrier, there had been no release from Claimant's doctor for him to resume service.

Based on the entire record the Board is of the opinion that Claimant was improperly dismissed by Carrier. He should be restored to service with all rights unimpaired subject to medical clearance. However, Carrier bears no financial liability for any lost pay during the period in question since there was no

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evidence whatever that he could have worked at the time of the claim being filed. In addition, Claimant must bear some responsibility for failure to promptly file the accident report, even though Carrier also bears some culpability.

AWARD

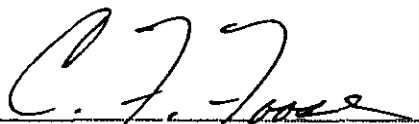
Claim sustained in part; Claimant shall be restored to duty with all rights unimpaired including seniority. His reinstatement shall be subject to medical clearance. He shall not receive compensation for time lost for reasons indicated above.

ORDER

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



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
October 11, 1988