

PUBLIC LAW BOARD NO. 2774

Award No. 190
Case No. 190

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

STATEMENT
OF CLAIM:

"1. That the Carrier violated the current Agreement when it dismissed Mr. J. D. Eady. Said action being excessive, unduly harsh and in abuse of discretion.

"2. That the Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired with compensation for all wage loss suffered, and his record cleared of all charges."

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.

The facts in this Case indicate that Claimant was working on a tie gang on May 1, 1987. Claimant asserted that while working on his job and removing rail anchors from the rail on that date, an anchor ricocheted off the opposite rail and hit him in the groin area of his left leg. He testified that he reported this injury

to the Assistant Foreman (Student Foreman) within 15 or 20 minutes after it happened. This was later denied by the Assistant Foreman in question. It was also denied by the Foreman of the gang at the investigation subsequently.

The Claimant continued to work, but on May 18, 1987, was admitted to the hospital with a blood clot in his groin area. At that time, when asked whether he had been injured on the job, he responded in the negative. Claimant returned to service on July 27 and July 28. Subsequently, he fell off the porch of his home and fractured his pelvis, and was placed on medical leave of absence beginning July 29, 1987.

Claimant remained off duty and, when his benefits were about to expire in February of 1988, an attorney filed a claim against Carrier for the effects of an alleged on-duty injury. Subsequently, in February of 1988, Claimant contacted the Roadmaster and stated that he needed money and offered to drop his claim against Carrier if he could be put back to work at that time. This was the first instance (in February of 1988) that Carrier had knowledge of any alleged on-duty injury.

Carrier did not return Claimant to duty at that time and filed charges against him indicating that he had fraudulently sought to claim an on-duty injury and that he had not filed an injury

report in a timely fashion as required by the rules. Following an investigation held on March 25, 1988, Claimant was found guilty of the charges of filing a false on-duty injury claim and failing to file the claim in a timely fashion, and was dismissed from Carrier's service by letter dated April 13, 1988.

A careful reading of the transcript of the investigation in this matter convinces the Board that Carrier has met its burden of proof in this instance. There was substantial evidence to indicate that Claimant not only failed to file an injury report in a timely fashion, but his claim of an on-duty injury was fraudulent. There have been myriad awards by Boards in this industry indicating that dishonesty in any form is a matter not only of serious concern, but is a proper basis for dismissal under most circumstances. Such a penalty is neither an excessive application of discipline, nor is it considered to have been an abuse of discretion or an arbitrary act by Carriers.

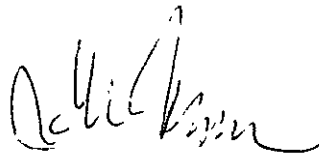
In this instance, Claimant's actions warranted discipline from every point of view. Carrier was not remiss in its exercise of its discretion in the award of discipline in this instance. The Claim must be denied.

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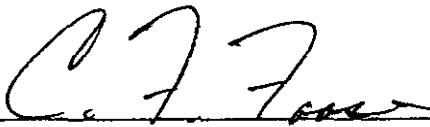
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AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
April 28, 1989