

PUBLIC LAW BOARD NO. 2774

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka & Santa Fe Railway Co.

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove former Old Middle Seniority District Trackman, J. B. Rodriguez, from service, effective July 12, 1991 was unjust.
2. That the Carrier should now be required to reinstate the Claimant to service with his seniority rights unimpaired, and compensate him for all wages lost on July 12, 1991.

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 record indicates that Claimant herein had a seniority date with the Carrier of June 6, 1950. At the time of the incident involved here, he was working as a Trackman on the former Old Middle Seniority District.

On May 9, 1991, with the help of Carrier's Roadmaster, Mr. Jones, Claimant filed an accident report claiming on an on-duty injury sustained on August 23, 1989.

After Claimant completed the form, Roadmaster Jones, together with the Clerk, signed the form as witnesses. Shortly thereafter, Claimant was cited for an investigation alleging that he falsified the circumstances surrounding the personal injury and violated certain Carrier Rules. Following the investigative hearing, Claimant was found guilty and dismissed from service.

Petitioner insists that Claimant worked for Carrier for 42 years with an excellent work record. There was not even one demerit in the course of that period of time, and only one personal injury prior to the incident here. Furthermore, Claimant's attendance was beyond reproach, indicating that he had not missed any work during the 42 years. Furthermore, the Organization maintains that Claimant was unable to understand many of the technical aspects of this case, nor did he willfully participate in the improper filing of the accident form. As a matter of fact, according to Petitioner, his memory was quite vague in terms of the date of the accident and other details. The Organization also argues that it was improper for the Roadmaster to have assisted Claimant in filing an improper accident report at such a late date. It was a willful procedure, according to Petitioner, and used a ploy to trap Claimant into what surely would be the ending of his career with Carrier. At most, according to Petitioner, the filing of the accident report was tardy and certainly did not warrant dismissal, as was used in this instance.

Carrier insists that Claimant was accorded a fair and impartial investigation and the evidence clearly showed that he was found guilty, properly, of violating the various rules which Carrier cited. In essence, Claimant falsified and fraudulently alleged an on-duty injury in violation of Carrier's Rules. There was no evidence, whatsoever, presented to substantiate the Claimant's claim of an on-duty injury, that supposedly occurred approximately 21 months prior to his completing the form. When Claimant was asked whether he reported the injury at the time of

the alleged incident to his Supervisor, he stated, "he didn't tell anybody". Furthermore, he did not seek any medical attention for the injury at that time or thereafter. In addition to these actions on the part of Claimant, the injury report was obviously filed late in violation of Carrier's rules, as well. Carrier believes that the claim has no merit and should be denied in its entirety.


The evidence in this case, as the Board views it, was at best flimsy. There was no indication of an attempt to deliberately defraud Carrier, as was alleged, in the course of this matter. Furthermore, there is serious question as to whether indeed Claimant was dishonest or simply ignorant of what he should or should not have been doing with respect to the injury. Even assuming arguendo, that Carrier was correct and that the claim was improperly filed and was fraudulent, Carrier certainly should have taken into consideration the fact that this employee had some 41 years of service and an impeccable record. In short, the Board believes that at most the Claimant in this case, erroneously filed a report some 21 months after the incident in question. This was tardy, but there was no indication of a motive to defraud presented in the course of the investigation. While Carrier is correct in insisting on adherence to its rules, in this instance, its actions with respect to this matter may be characterized as "overkill". The Board believes that the discipline to Claimant in this incident, was at best, excessive and must be reduced. For that reason the Board will sustain the claim in part, reducing the discipline to a six-month's suspension because of his improper actions in the filing of the accident report. He will be made whole for all loss in excess of that six month period.

AWARD

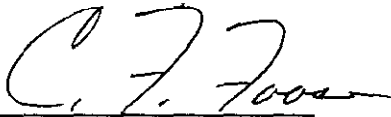
Claim sustained in part as indicated above.

ORDER

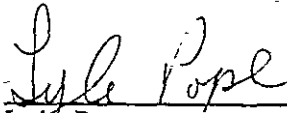
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foose
Employee Member



Lyle Pope
Carrier Member

Schaumburg, Illinois
June 30, 1993