

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 Los Angeles District Machine Operator, A. Valenzuela from service, effective August 23, 1991, was unjust.
2. That the Carrier shall be required to reinstate Claimant, A. Valenzuela, with his seniority rights unimpaired, and compensate him for all wages lost from August 23, 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 on July 16, 1991, at approximately 2:15 P.M., Claimant felt a pop in his right knee while he was getting down from the machine that he had been operating. He completed his work that afternoon without incident. The following morning he contacted his Supervisor, and told him that he had injured his knee and was in the process of trying to see a physician since the knee was all swollen and he couldn't walk very well. He was off the following day on the 18th

of July and on July 19th, he reported to the Roadmaster, advising the Roadmaster of his desire to claim an on-duty injury and he filed the necessary report. Subsequently, on July 22nd, a letter was addressed to Claimant advising him to report for an investigation based on the allegation that he may indeed have failed to properly report an incident of an injury and had falsely claimed an injury, based on the incident described above. Following an investigation, Claimant was dismissed from service.

The Carrier maintains that the testimony at the investigation indicates that Claimant did not injure his knee while on duty on July 16th, and that his report of the injury is less than accurate. Thus, the record clearly establishes the fact that the alleged injury of July 16, may indeed never have occurred, and furthermore if it did occur, the injury report was filed on July 19th, which was tardy.

The Organization insists that the record was devoid of any evidence to establish that Claimant falsified an injury as charged. At most, he could have been found guilty of filing an injury report late, which in this instance was caused by the fact that the physician did not diagnose his problem, until the date that he filed the injury report, July 19th. Petitioner says further that the employees' reluctance to file an accident report was exacerbated by Carrier's vigorous investigation of such reports, and employees feeling that it was necessary to clearly establish that the injury occurred while on duty, before filing such a report. In this instance, it is clear according to the Organization, that Claimant did indeed file a report as soon as he was aware that there was an injury caused by an on-the-job incident. Furthermore, the Organization insists that Carrier did not bear its burden of proof in this matter, and the claim should be sustained.

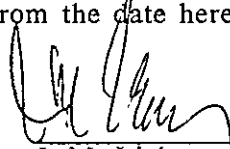
An examination of the record of this matter does not indicate any support for Carrier's position that there had been a falsification of an injury. There was an injury, which was diagnosed and attested to by Claimant, as well as his physician. At most it may be said that Claimant filed his report three days late. As such, it is obvious that the penalty of dismissal was excessive under all of the circumstances. It is true, as indicated by Petitioner, that Carrier did not bear its burden of proof in establishing that there was any falsification of an injury by Claimant. For that reason the discipline in this instance shall be modified, and Claimant shall be reinstated to its former position with all rights unimpaired, but without pay for time lost.

AWARD

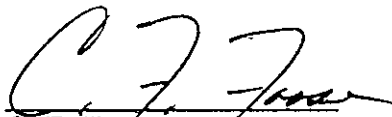
Claim sustained in part; Claimant shall be reinstated to his former position with all rights unimpaired, but without pay for time lost.

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



Lyle Pope
Carrier Member

Schaumburg, Illinois
June 30, 1993