

PUBLIC LAW BOARD NUMBER 3445

Award Number: 72

Case Number: 72

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claim on behalf of Lewis Jaynes, SSN 253-80-3381, for restoration to service with seniority and other rights unimpaired, and pay at his respective rate for all time lost subsequent to February 17, 1989.

FINDINGS

Claimant entered the Carrier's service on September 10, 1971.

Before beginning his vacation (the week of June 20, 1988) Claimant told his co-workers that he had arthritis in the leg and planned to see a physician. At the end of his vacation, June 27, 1988, Claimant did not return to his assignment but rather, called his contract foreman L. Jefferson, advising him that he (Claimant) would be off sick with back problems probably through the beginning of 1989.

Claimant's telephone bill for the applicable period shows several telephone calls to Jefferson, the last one being on July 4, 1988. Jefferson repeatedly testified that Claimant did not advise him of any injury to Claimant's back.

Claimant was examined by several physicians during the period June 27 to September 2, 1988. By letter dated September 2, 1988, Dr. Clark stated:

There is no known injury, but he has continued to have this discomfort.

I examined him today and am unable to find any clear evidence of a herniated disc.

Track Supervisors F. R. Manning and J. D. Hariss as well as Jefferson testified that Claimant never reported any problem or personal injury prior to December 1988.

On December 27, 1988, Claimant telephoned Division Engineer C. E. Stine and reported that he had suffered a personal injury sometime between May 27 and June 27, 1988. Claimant acknowledged that he did not report the alleged injury at the time it occurred and that he was uncertain as to the exact day the injury was sustained.

On July 27, 1988, the Railroad Retirement Board filed a lien against the Carrier after that Board had received an application for benefits from Claimant. On that form, Claimant's last day of work is listed as June 17, 1988 and his date of injury as June 27, 1988.

By letter dated January 13, 1989, Claimant was directed to attend a formal investigation on charges that he failed to report the alleged injury, violated Rule 1000 and falsified an on duty injury that did not actually occur. The investigation was postponed, but was held on February 6, 1989. At that time, evidence was adduced which led to Claimant's dismissal by letter dated February 17, 1989.

Rule 1000 provides:

An employee who sustains a personal injury while on duty must report it, before leaving Company premises, to his immediate supervisor or to the employee in charge of the work, who will promptly report the facts through the channels.

If an employee at any time marks off or obtains medical attention for an on-duty injury or occupational illness, he must promptly notify his supervisor.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

The position of the Carrier is that Claimant was dismissed for just cause. The Carrier maintains that it has proved conclusively that Claimant is guilty of each of the charges against him. It cites Claimant's own admission and the testimony of several witness to prove that he failed to promptly report the alleged injury as required by Rule 1000. The Carrier cites Claimant's physician's statement that there was no injury or evidence of herniated disc in September as proof that Claimant was not injured at that time, falsified his report when he did report it and did not report the injury on July 4. Similarly, the Carrier contends the falsification is proved by the RRB lien in which Claimant alleges he was injured 10 days after his last work day; he could not have been injured on the job, as he contended.

As to the Organization's procedural arguments, the Carrier contends that it complied with all the requirements of Rule 40(a) regarding the timing of the investigation pointing out that the basis of the discipline is

the December 27 report of absence, not the absence itself.

The position of the Organization is that Claimant was unjustly dismissed based on procedural grounds as well as the merits.

On the procedural question, the Organization charges a violation of the 10 day limit in Rule 40(a) based on its allegation that the Carrier knew of the alleged violation in June or July and did not take action until January.

On the merits, the Organization contends that Claimant notified his supervisor of his medical problem as soon as he (Claimant) was aware of it. The Organization maintains that Claimant advised Jefferson of his problem in their July 4 telephone conversation. The Organization admits that Claimant was "tardy in reporting his injuries and trying to be truthful."

After review of the entire record, the Board finds that Claimant was dismissed for just cause.

The Carrier has established by substantive credible evidence in the record that Claimant violated Rule 1000 by failing to report an alleged on the job injury in a timely fashion as set forth in the rule and for falsifying an on duty injury. The record clearly indicates, and Claimant admission and the Carrier witnesses' testimony support, that Claimant did not report his alleged injury as required by Rule 1000. Moreover Claimant did not know what his injury was or when it occurred because it did not occur; there was no injury. The RRB lien notice showed that he was injured after he went off work. As late as September, he still did not appear to be


injured, although he apparently had some discomfort. Whatever Claimant's medical problems, they were not the result of an on-the-job injury.

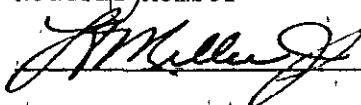
However, on-the-job injury is what Claimant alleged and it was false. The maintenance of honesty in the employment relationship is essential. Fair dealing between the parties is the bedrock of the labor-management relationship. Claimant has violated that trust. His conduct fully warrants dismissal.

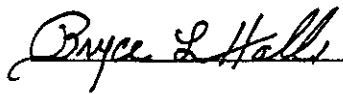
The Organization's procedural objection is without basis. The date of the Carrier's cognizance of Claimant's offense was clearly December 27, 1988 because his offense was in the reporting of the alleged injury and absence, not in the absence itself. The notice and investigation was held in a timely fashion according to Rule 40(a).

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: FEB. 22, 1990