

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION	*	
"CARRIER"	*	
-and-	*	CASE NO. 1
	*	
BROTHERHOOD OF MAINTENANCE OF	*	AWARD NO. 8
WAY EMPLOYEES	*	
"ORGANIZATION"	*	
	*	
	*	

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-241-D) that:

(a) The discipline of 20 days suspension assessed Claimant A. F. Garcia, Track Foreman, was without just and sufficient cause and in violation of Rule 27, Section 1(d).

(b) Claimant A. F. Garcia shall be exonerated and his personnel record expunged of all entries related to this suspension and shall be allowed the remedy of Rule 27, Section 4.

This case arose when the Carrier charged A. F. Garcia, hereinafter the Claimant, for allegedly falsely reporting a personal injury. The specific charges, contained in a Notice of Hearing dated May 18, 1983, were as follows:

To determine your responsibility, if any, for alleged false reporting of a personal injury on or about April 25, 1983, at Callicoon, New York.

Reference alleged injury of April 19, 1983.

The hearing was held on June 30, 1983. The Claimant was present and represented by the Organization. Following the hearing, the Carrier notified the Claimant that he had been found guilty of the charge and assessed 20 days actual suspension with time already lost from work because of his physical problems to be applied towards the disciplinary period. The above quoted claim was then filed on behalf of the Claimant.

On Wednesday, April 19, 1983, the date of the Claimant's alleged injury, he was assigned as an Inspection and Repair Foreman. The Claimant allegedly injured his back as a result of his highway-rail truck derailing. The Claimant continued to work on Thursday and Friday. In spite of a Carrier rule requiring that an employee immediately report any injury, the Claimant did not report his injury to the Carrier until the following Monday, April 25. The Claimant thereafter was examined by several doctors. He did not work for a period of time because of his physical difficulties.

POSITION OF THE PARTIES:

The Organization contends that there is no evidence in the record that the Claimant falsely reported his injury was work related. In addition, the Carrier mistreated the Claimant by requiring him to ride in pain a long distance for a medical exam and failed to include important medical evidence in the hearing on the property.

The Carrier maintains that the Claimant deliberately misrepresented his condition or merely assumed that his alleged injury was due to derailment. The medical evidence from several doctors

establishes that the Claimant's physical problems on April 25, 1983 were caused by arthritis and not any work related injury. The Claimant's failing to report the injury and continuing to work until April 25 further establishes he was not injured at work on April 19.

OPINION OF THE BOARD:

The Board has concluded that the record does not contain substantial evidence that the Claimant falsely reported an injury. There is no dispute that the Claimant was involved in a derailment on April 19 and had physical problems that prevented him from working by April 25. Although it cannot be said with certainty that the derailment caused the Claimant's physical problems, at least one doctor apparently believed a sacro-iliac sprain was the Grievant's problems. It is not unreasonable to conclude that the Claimant's preexisting arthritis may have been triggered by the derailment and then worsened between April 19 and 25. The Claimant has no history of dishonesty. In these circumstances, the evidence relied upon by the Carrier is insufficient to establish that the Claimant knowingly filed a false report.

AWARD:

The claim is sustained. The remedy shall be in accordance with Rule 27, Section 4 of the applicable Schedule Agreement. Monies owed, if any, shall be paid within 30 days.

Scott E. Buchheit 11-21-85
SCOTT E. BUCHHEIT
Neutral Member

Robert O'Neill 12/2/85
ROBERT O'NEILL
Carrier Member I dissent

This Board member does not agree with the majority's conclusion that the dominant pre-existing arthritis may have been triggered by the derailment. The doctor that diagnosed a sacro-iliac sprain examined the dominant on May 5, 1983 for an alleged injury on April 19, 1953.

James P. Casese 11/26/85
J. P. CASSESE
Organization Member