

PUBLIC LAW BOARD NO. 4021

Award No. 1
Case No. 8

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to remove Northern Division Trackman J. P. McGill from service effective March 4, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant McGill to service with seniority rights unimpaired and to compensate him for all wages lost from March 4, 1985.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

Claimant was employed as a Trackman, and, on December 20, 1984, was assigned to assist Truck Driver/Trackman Perez in obtaining a quantity of tie plates from a Gondola Car, transporting them by truck to the work area, and carrying them by hand to the work location. Claimant performed the assigned tasks, and completed the balance of his assigned shift. He arrived at work the following morning, complained to his Foreman that he had a sore back (which he attributed to the previous day's assignment), and was taken to a Doctor. The Doctor confirmed that Claimant had pain in the lower back, and Claimant returned to work and filled out one of the Carrier's personal injury reports.

On January 28, 1985, Claimant was notified to attend a formal investigation in connection with the following:

. . . concerning report of personal injury you allegedly sustained while working as trackman on Extra Gang 64 at Saginaw, 11:00 AM, December 20, 1984, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 1, 2, 14 and 16, General Rules for the Guidance of Employees - Form 2626 Standard.

In the transcript of the Investigation held on February 15, 1985, Claimant's representative objected to the Notice of the Investigation in the following exchange with the Hearing Officer on Page 3 thereof:

Q. Mr. Chairman, before we begin with Mr. McGill, the Carrier has made the allegation concerning the alleged injury and I don't see in the notice where you say you falsified any documents or anything - just what are you trying to determine?

A. The Notice is self-explanatory.

Q. It just isn't clear, just vague and indefinite as to what you are trying to determine as far as the personal injury. You say he sustained a personal injury and you've got him charged with rules violation. You're just not clear as to the rules violation.

A. I think the rules are self-explanatory.

The Rules cited require employees to work safely and use good judgement; to be conversant with and obey the Company's rules; to obey instructions from proper authority; to not withhold facts or information with regard to personal injuries; to remain alert and attentive, and plan their work to avoid injury; to not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious; and to conduct themselves in a manner that will not bring discredit on their fellow employees or subject the Company to criticism or loss of good will. Claimant was charged with "possible violation" of all these rules, in connection with the "report of personal injury you allegedly sustained. . ."

The Discipline Rule of the Agreement does not require a "precise" or "specific" charge, as is required by many other labor contracts; however, even under the broad provisions of the Rule involved, an employee and his representative have the right to advance notice with sufficient information to permit them to prepare and defend against the charges.

In the case at hand, the Notice of investigation was so broad as to preclude the Claimant and his Representative from preparing for the Investigation. The Notice could be construed to allege that Claimant caused the injury through disregard of Carrier's safety rules; that he delayed reporting the injury; that he had falsified the injury report; or that he was not injured at all, and was dishonestly attempting to claim a personal injury. Each is a serious charge, but which was the subject of the Investigation? That was precisely the question of Claimant's Representative quoted above, but the Hearing Officer gave no answer.

In fact, the decision to discharge Claimant following the Investigation did little to specify the nature of the offense with

which Claimant was charged and found guilty, but merely provided that:

It is the decision that you failed to comply with Rules 14 and 16, General Rules for the Guidance of Employees, Form 2626 Standard and for your failure to comply with these you are hereby discharged from service effective immediately.


While the decision letter eliminated two of the Rules from the original Notice, it did little to clarify the offense for which Claimant was found guilty and terminated. In fact, it was not until the General Manager's May 10, 1985, reply to the General Chairman's appeal, that Carrier stated its position that Claimant had misrepresented and/or falsified the injury itself.

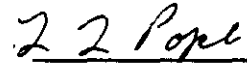
While this Board is reluctant to decide discharge cases solely on procedural matters, the issue here involved goes to the heart of a Claimant's basic right to due process. This right has been upheld by Arbitrators throughout this and other Industries (See: Second Division Award 6612, Third Division Award 14778 and 20947, among many others).

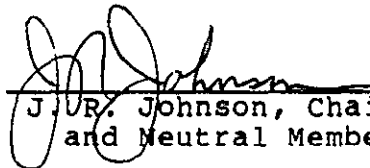
The Board finds that Claimant was not afforded a fair and impartial Investigation, and, therefore, the resultant discipline cannot stand.

AWARD

Claim sustained.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: February 28, 1986