

PUBLIC LAW BOARD NO. 4021

Award No. 18
Case No. 16

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 Coast Lines Welder Helper M. G. Verdugo from service effective July 15, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Verdugo, with seniority rights unimpaired, and compensate him for all wages lost from July 15, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant had been employed by the Carrier for approximately one and one-half years, and was assigned as a Welder Helper, when the incidents involved in this case transpired. There are four cases on this docket involving Claimant Verdugo: one involving twenty demerits, which was addressed in Award No 17 of this Board, and three other cases, each of which resulted in his discharge from service. Although the events upon which all four cases are based occurred within a short period of time, each was treated as a separate offense during the handling on the property, and each of the cases resulting in discharge involved substantially different charges. Therefore, the Board will render a separate decision in each of the cases.

In the case at hand, Claimant was working with Welder Medina on June 26, 1985, when, at approximately 11:00 a.m., he complained to the Welder that his right foot was "giving him some pain." When Welder Medina asked Claimant how he injured his foot, Claimant stated that "he did not know." They completed work that day, without further mention of the sore foot.

The next morning, June 27, 1985, Claimant complained again that

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his foot hurt, and asked permission to go to a store to purchase an elastic bandage. At that time, Roadmaster McBee asked Claimant "if he had hurt his foot on the job," and Claimant replied that he did not know when or where he hurt his foot. He was given permission to obtain the bandage, but did not do so because of the cost. Later that day, Claimant was taken to the outfit car by the Welder, because his foot hurt, but advised the Welder that he still did not know how it became injured.

On June 28, 1985, Claimant arrived one hour late for work, and was advised that he would be disciplined (the subject of Award 17 of this Board), and he was assigned to work in the yard that day, because his gang already had left for their work location. He was upset about the prospective discipline, but did not mention his foot on that day.

On Monday, July 1, 1985, Claimant presented himself at the Roadmaster's office at 7:00 a.m., and advised the Roadmaster that "he had remembered where he had injured his foot." That he had injured it on June 26, 1985, at 11:00 a.m., while pulling a rail grinder. Claimant completed Carrier's personal injury report at

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that time, and was taken for a medical examination.

The following day, Claimant was presented with a Notice of Investigation:

" . . . concerning your failure to promptly report alleged injury . . . and . . . falsification of injury report Form 1421 on July 1, 1985, concerning same alleged incident"

Claimant was charged with the violation of certain Carrier Rules which govern his class of service. The Investigation was postponed at the request of the Organization, but Claimant failed to appear at the designated time and place. The Investigation was conducted in abstentia, and, therefore, the facts described above are taken solely from the testimony of Carrier's witnesses. Unrefuted, such testimony must be taken as fact.

Carrier's Rules require employees to report personal injuries "by the quickest means of communication," and that Employees "must not withhold information or fail to give all the facts, regarding irregularities, accidents personal injuries or rule violations." The Rules also prohibit dishonesty.

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Welder Medina testified that Claimant did not know how he hurt his foot, when the Welder asked him before 12:00 Noon on June 26, 1985 - less than one hour after the alleged injury occurred. The record contains testimony from three witnesses that Claimant was asked that question repeatedly over the next few days, and he always gave the same reply. That he did not know how or when he was injured. It was not until five days later - after Claimant was threatened with discipline for an unrelated matter - that he "remembered where he had injured his foot," and that the injury was job related.

The Carrier concluded that Claimant's recollection was rooted in the threatened disciplinary action, and acted on that conclusion. Based upon the evidence in the record, although admittedly one-sided, the Board finds that conclusion to be reasonable. It is unfortunate that Claimant did not elect to attend the Investigation, but that is his right and his risk.

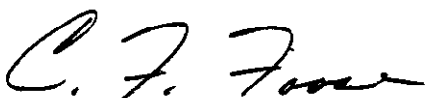
Under the facts and evidence in the record, the Board finds the Claimant guilty of the charges. The charges are serious, and the

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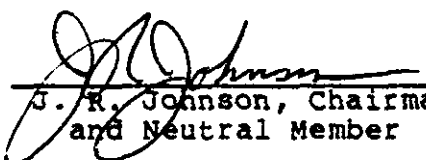
Claimant's service was less than two years. Therefore, we will deny the claim.

AWARD

Claim denied.


C. F. Foote, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: July 22, 1986