

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO -)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The dismissal assessed Laborer J. W. Orefice for allegedly reporting a personal injury on April 9, 1990 which was stated to have occurred March 28, 1990 was arbitrary, capricious and unwarranted.
2. Provided the sustaining of charges in this regard was appropriate, which it was not, the amount of discipline assessed is obviously excessive.
3. The Carrier failed to handle this matter in a procedurally correct fashion as evidence contained in the hearing transcript clearly shows.
4. In light of (1), (2), and (3) above, the Claimant's record shall be cleared of the discipline referred to in Part (1), as well as any mention of the alleged incident and he shall be compensated for any and all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation on May 4, 1990 in Portland, Oregon. The claimant was charged with allegedly sustaining a personal injury on March 28, 1990 and with failure to report such alleged injury in a prompt manner in possible violation of Rules E and 4004 of Form 7908 Safety, Radio and General Rules for All Employees.

The claimant was removed from service pending the outcome of the investigation. Pursuant to the hearing the claimant was found guilty and was dismissed from the service of the Carrier.

The Union objected to the claimant being removed from service. The Union also objected that the charge was not precise. The claimant was charged with a violation of Rules E and 4004. These rules apply to accidents and personal injuries and provide that such must be reported by the first means of communication. Rule 4004 reads in part:

"All cases of personal injury, while on duty, or on company property must be promptly reported to proper authority on prescribed form.

Track Supervisor S. R. Adams testified the claimant worked and reported to his Gqng 9013. He stated that on March 28 he did not have any personal injuries reported to him and the claimant specifically did not report any injury. He testified the first he knew of the injury was on April 9. Mr. Adams also stated that Mr. Maes did not tell him the claimant would not report to work on April 5.

Track Supervisor E. R. Smith testified he was on vacation on March 28 and returned from his vacation and the first shift he worked was on April 9, 1990. He stated the claimant reported to work approximately one hour late on that date.

Supervisor Smith testified he asked the claimant why he was late to work, and the claimant replied he wasn't coming to work, he was there to file an accident report. Mr. Smith testified he asked the claimant when the accident occurred, and the claimant stated it occurred on March 28. He testified he asked the claimant how come he did not fill out the accident report when the injury occurred, and the claimant gave no answer.

Supervisor Smith testified he then asked the claimant to go see the company doctor since he was filling out an accident report, and the claimant stated he had already seen a doctor and he did not have to go see a doctor. He testified the claimant told him he did not have any right to tell him what to do.

Mr. Smith also testified that the claimant finished filling out the accident report, and he asked the claimant to stay while he could get a witness to his signature, but the claimant left without getting a witness.

Supervisor Smith testified the claimant filled out the accident report on April 9, 1990. Mr. Smith agreed that the claimant had a doctor's slip from his doctor on April 9. Mr. Smith testified the claimant was out of service account of injury during the period he was being withheld from service.

The claimant testified that he realized on March 29 he had hurt himself, but did back up and state he knew he was hurt on March 28 while riding from the gang in Wyeth. The claimant stated that on March 28 on the way home from work he rode with Mr. Maes, a co-worker, and his back hurt so bad, he was in the fetal position,

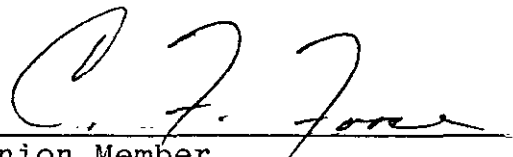
The claimant testified maybe he should have filled out the accident report on March 29 but he just assumed it was an ache he would get over, and he just never did. The claimant admitted he was going to see a doctor on April 5, yet he did not report the injury until April 9.

The claimant also testified that on April 4 he realized his back wasn't getting any better but was getting worse. At that time he still had an opportunity to report the injury but failed to do so.

The claimant knew, or certainly should have known, he had an obligation to report the injury at the time it occurred. Under these conditions there is no justification to set the decision of the Carrier aside.

AWARD: Claim denied


Preston J. Moore, Chairman


Union Member


Carrier Member