

PUBLIC LAW BOARD NO. 4338

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

STATEMENT OF CLAIM:

1. The 30 day actual suspension assessed Laborer F. Sanchez for alleged violation of various company rules as indicated by Mr. Malone's letter of December 7, 1992 is arbitrary, capricious and unwarranted.

2. The claimant's record shall be cleared of the discipline referred to in Part (1), and he shall be returned to service and reimbursed for 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 in Rawlins, Wyoming on November 17, 1992 to develop the facts and place responsibility, if any, in connection with his possible falsification of personal injury report he allegedly sustained on October 27, 1992 and submitted on November 3, 1992.

The claimant was also charged with his alleged failure to properly report the alleged personal injury until November 2, 1992 which indicated a possible violation of Safety, Radio and General Rules for All Employees, effective October 29, 1989.

Pursuant to the investigation the claimant was found guilty of failure to properly report the personal injury sustained on October 27, 1992 which he did not report until November 2, 1992. The claimant was assessed thirty days actual suspension.

At the outset of the hearing it was contended that the Notice of Investigation dated November 9, 1992 did not state precise charges. The Board finds the charges set forth above are precise, and they specifically charge the possible falsification of a personal injury report, along with the claimant's alleged failure to properly report the alleged personal injury until November 2, 1992. Those are the only two charges which could be considered at the investigation.

R. L. Samuelson, Manager of Track Maintenance, testified that on Monday, November 2, 1992 he received a call from the claimant sometime around 9:00 or 10:00 o'clock in the morning wherein he stated he was in Laramie and was going to see a chiropractor. This witness

also testified the claimant advised him he had been having cramps in his legs. When the claimant was asked if he had sustained an injury, he stated he did not know.

Mr. Samuelson further testified that he asked the claimant to call him that evening, and when the claimant called that night at his home, he advised that he went back to the chiropractor and they thought he might have some back problems and were sending him for an MRI scan. Mr. Samuelson testified the claimant again told him he did not know if he had an injury.

Mr. Samuelson then testified that at this time he instructed the claimant to come to his office the next morning since they needed to fill out some paperwork on the injury. He testified that at that time the claimant was not sure if he had incurred an injury or what kind of problem he had.

Mr. Samuelson also testified that he called Section Foreman Chuck Sanchez and inquired regarding his knowledge of the situation and was advised that the claimant had mentioned to him during the week prior to that time that he was having a sore leg and he had fallen down while elk hunting and thought he had hurt his leg. Mr. Samuelson further testified that Mr. Sanchez advised him that he had told the claimant a couple of different times that week that he needed to report the injury, but the claimant had failed to do so.

Mr. Samuelson testified the claimant filled out a personal injury report stating that he incurred the injury while on duty handling bags of rail anchors and that hydraulic power unit they were tightening track bolts with, and that this would have been on October 27 when he incurred the injury.

Mr. Samuelson testified that he contacted the Section Foreman again who stated they hadn't picked up any anchors on the 27th; they had handled them the prior week.

Charles Sanchez, Jr., Section Foreman, testified that on Thursday, October 29 the claimant told him: "I'm feelin' a lot better, don't worry about it" and further stated "I fell down from when I was huntin' over the weekend." Mr. Sanchez further testified that he noticed the claimant was limping, and the claimant said it had happened over the weekend.

Mr. Sanchez further testified that he advised the claimant that he still needed to fill out an accident report and had advised the claimant at least two or three times that he should fill out an off-duty accident report. He also testified the claimant never told him anything about being hurt from anchors or anything like that.

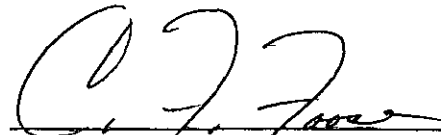
The claimant testified he did tell Foreman Charles Sanchez that he fell while out elk hunting, but he stated he wasn't sore from that. The claimant also testified that on Tyesday, the 27th, he knew he had a pain in his leg and he was limping quite a bit. He also testified that Foreman Sanchez told him to fill out an off-duty accident report.


The record establishes that the claimant was only found guilty of failing to properly report an injury on October 27, 1992 and did not confirm that he was injured until November 2, 1992 and did not submit an injury report until November 3, 1992. The Carrier found the claimant guilty of violation Rule 4004 of the Safety, Radio and General Rules for All Employees, effective October 29, 1989.

The Board has carefully studied and considered all of the circumstances and the testimony of the claimant. Under the facts herein there is no justification to set the discipline aside. The claimant has 18 years of service with the Carrier and should be well aware that any injury should be reported as soon as possible. The claimant's Section Foreman instructed him to do so, and he still failed to report the injury.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member