

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO. )	
	(EASTERN LINES) )	
	)	AWARD NO. 7
TO	AND	)
	)	CASE NO. 7
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	
	EMPLOYES )	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Dallas Division Laborer J. Q. Hodge was unjustly dismissed from service without receiving a fair and impartial investigation.
2. Claimant Hodge shall now be reinstated to his former position with pay for all time lost, with vacation and all other rights unimpaired and his personal record cleared of all charges.

HISTORY OF DISPUTE:

At the time of the events giving rise to the claim in this case Claimant was working on the Dallas Division as a laborer on Extra Gang 417.

On March 5, 1987 Claimant helped lift a rail drill from a truck at which time he felt a pulling sensation in his back. That evening Claimant placed a call to his supervisor but the supervisor was not available. Claimant again called his supervisor on the morning of March 6 informing him that he was going to see a doctor regarding pain he was experiencing and that he would not report to work that day. At approximately 6:00 p.m. on March 6 Claimant telephoned the Roadmaster to inform him that Claimant's doctor had diagnosed his injury as a possible slipped disk and that Claimant related the injury to the lifting of the rail drill the previous day. Claimant came to Houston, Texas on March 9, 1987 and filed a Form 2611 concerning his injury.

By letter of May 7, 1987 the Carrier notified Claimant to appear for an investigation for failing to report an alleged personal injury properly and feigning a personal injury in violation of Rules 806, and 607(1) and (4). The investigation was held as scheduled. By letter of May 27, 1987 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty as charged and that he was dismissed from the Carrier's service.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

A threshold issue in this case is the timeliness of the Carrier's notice of investigation. Article 14(d) of the applicable agreement provides that "[N]o discipline shall be assessed that involves any matter of which the Carrier's head of department had knowledge sixty days or more." The Carrier contends that its May 7, 1987 notice of investigation was timely inasmuch as Claimant did not file his Form 2611 until March 9 and the

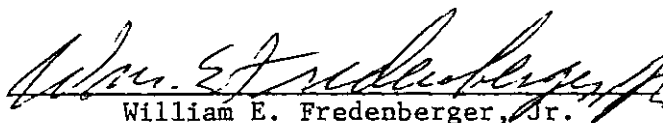
Carrier did not receive medical reports concerning the incident until March 22. However, the record clearly establishes that Claimant informed the Roadmaster orally on March 6, 1987 that he had sustained a personal injury the previous day. Thus, responsible Carrier officials had knowledge on March 6 of what they considered to be Claimant's wrongful conduct. Accordingly, the Carrier's May 7 notice was untimely.

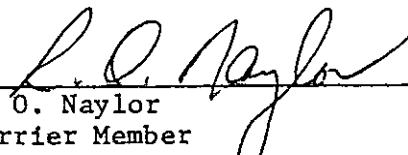
It is a proposition too well established for citation to authority that time limits in discipline cases are strictly observed. Inasmuch as the Carrier failed to meet the time limit in this case applicable to the notice of investigation, the discipline must be set aside.

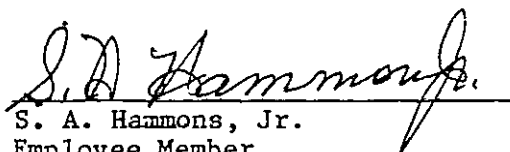
AWARD

Claim sustained.

The Carrier shall make this award effective within thirty days of the date hereof.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
S. A. Hammons, Jr.  
Employee Member

DATED: June 28, 1988