

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim on behalf of Trackman G. N. Heatley, California Division, seniority date February 6, 1984, for reinstatement with seniority, vacation, all rights unimpaired and pay for all wage loss commencing May 12, 1989 continuing forward and/or otherwise made whole.

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On May 2, 1989, Carrier's Division Manager wrote the claimant notifying him of formal investigation to be held May 12, 1989, concerning his alleged absence without proper authority on April 12, 1989, and allegedly furnishing false information on April 13, 1989, in connection with an injury he allegedly sustained on April 12, 1989, in possible violation of Rules A, 8 (sic., B), 1004, 1007, 1018 and 1027, Safety and General Rules For All Employees. Following the investigation, the claimant was found responsible for violation of the rules cited, and he was removed from service for his responsibility in connection therewith.

The transcript of testimony at the formal investigation reveals the following facts of record:

Claimant was unhappy with the assignment his foreman had given him beginning April 11, 1989.

Claimant attempted to get his foreman to give him a different assignment, to no avail.

Claimant did not complete an injury report either during his assignment on April 12, 1989, or before leaving the job site on April 12, 1989.

Claimant did not report for duty as assigned on the evening of April 12, 1989.

Claimant stated that he attended "night court" on the evening of April 12, 1989.

Claimant reported for duty on the evening of April 13, 1989, and was found about a mile and one-half to two miles away from his duty point.

Claimant had some pills (apparently a sample) for pain in his possession while on duty April 13-14, 1989; he later told Roadmaster Mejia (on April 17) that he had obtained the pills from his girlfriend.

None of the above facts of record are in dispute. However, the claimant's following uncorroborated allegations are in dispute:

Claimant injured his back (began experiencing back pain) during his tour of duty which commenced April 11, 1989.

Claimant advised his foreman that his back was hurting due to the type of work he was assigned.

At the time of his release from duty on the morning of April 12, claimant did not know he would not be working that night. He went home and went to sleep. While he was sleeping his back began to swell.

After calling Carrier's office at San Bernardino about 4:00 PM on April 12, 1989 (to report that he would not be at work that evening), claimant went to the doctor's office (about 4:30 PM) but was unable to see the doctor; a woman in the doctor's office told him the doctor couldn't be seen for for five days.

Claimant did not recall telling the Maintenance Clerk at San Bernardino that he had to attend night court on the evening of April 12 (although he admitted to attending night court that date).

Claimant did not mislead his supervisors regarding his absence on April 12.

Claimant did not furnish false information on April 13-14 regarding his alleged injury of April 12, 1989.

If the claimant's testimony as alluded to above were true, it might be considered as a rational defense against the charges. However, the testimony of the three Carrier witnesses severely taxes the credibility of the claimant's testimony. According to Foreman Canales, the claimant never mentioned the alleged injury during his tour of duty which commenced April 11, 1989; Canales testified that the

claimant told him that the job to which he was assigned was too hard and he would rather do something else. When Mr. Canales confronted the claimant on the evening of April 13 about his alleged unauthorized absence on the previous shift, the claimant told him that he had called San Bernardino and told them he had to go to the doctor and would not be at work the evening of April 12. He testified further that the claimant initially told him he had been sick but subsequently changed his story to the effect that his back was hurting and he had to go to the doctor; Canales testified that the first time he heard of the claimant's alleged injury was when the claimant told him on April 13. He also testified that the claimant told him that he was in such pain that the doctor told him to take two or three days off. After this discussion with the claimant on April 13, Canales said he took the claimant back to his post of duty; according to Mr. Canales, the claimant performed his duties in a normal manner on April 13-14 but continued to complain about the job being too hard.

Maintenance Clerk Lopez confirmed the fact that the claimant called San Bernardino and talked to her on the afternoon of April 12, but testified he told her that he had to go to night court that evening; he didn't say anything to her about the alleged back injury.

Roadmaster Mejia testified that when he talked to the claimant on the morning of April 14, the claimant told him that he had hurt his back between 2:00 AM and 3:00 AM on April 12, and had gone to the doctor on the 12th. When Mr. Mejia asked him for the paper work (doctor's statement), the claimant said he had forgotten it and he would bring it the following day; however, he did not do so. When the claimant finally produced a doctor's statement dated April 17, it merely stated -

"To Whom It May Concern:

Please be advised that the above-captioned
was in our office today for a consultation.

/s/ Wendell O. Findley, D.C."

When Roadmaster Mejia confronted the claimant regarding failure of the doctor's statement to indicate that he had seen the doctor on April 12, the claimant told him he had gone to the doctor's office but was told he could not be seen by the doctor for five days. Roadmaster Mejia went on to testify as follows:

"So then I asked him what you were telling me all along was a lie, you did not see a doctor; you were not prescribed any medication by a doctor, is that correct? He said yes. I asked him where

he got the medication from and he told me, he said, his girlfriend was a nurse and she had a prescription for some of that Norfax and that's where he got it."

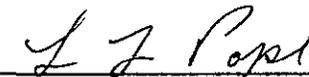
It is not clear from the testimony of record that the claimant was absent from duty without proper authority at 8:30 PM, April 12, 1989. It appears from the testimony of Maintenance Clerk Lopez that she made an attempt to reach Roadmaster Mejia to assist the claimant in obtaining authority to be absent from duty on April 12, but was unable to reach him. She then assured the claimant that she would get the word to the proper authority somehow, leading claimant to believe that his absence would be covered. However, it is clear from the testimony of record that the claimant attempted to deceive his supervisors regarding the real reason for his absence (he had to attend night court), and he furnished false information regarding his alleged back injury. In fact, claimant admitted that on April 14 he led Roadmaster Mejia to believe that he had seen a doctor on April 12, and that said doctor had prescribed a medication for his back pain. He also admitted to having led Foreman Canales to believe that he had seen a doctor on April 12.

Considering all the evidence of record, the Board finds that the claimant was responsible for furnishing false information concerning his alleged injury, a very serious violation of the rules. In view of the claimant's prior discipline record and the very serious nature of the violation, his removal from service was an appropriate measure of discipline for his responsibility in connection therewith.

AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:

April 23, 1990