

BEFORE PUBLIC LAW BOARD 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

Case No.19

STATEMENT OF CLAIM: Claim of the Brotherhood that:

(1) The dismissal of Track Laborer M. M. Balderrama for allegedly violating General Rules A, B, D, E, 607 and 4004 of Form 7908, Safety, Radio and General Rules for All Employees, in connection with the charges of alleged failure to promptly report a personal injury which originally occurred on July 26, 1993, aggravated on August 6, 1993, and the falsification of his personal injury report, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-201/930732) NRAB 94-3-554.

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all rights unimpaired and he shall be compensated for all wage loss suffered beginning August 12, 1993 and continuing until he is reinstated to service.

FINDINGS:

Claimant Manuel Balderrama was employed by the Carrier as a trackman with the Tipton, Wyoming section gang.

On July 26, 1993, while assisting his section gang in raising track at milepole 753.5 on the Laramie Subdivision., the Claimant "[f]elt a pull when using the lining bar to raise heavy track". On July 28, 1993, the Claimant requested time off to seek medical attention for the pain in his lower back. Claimant was examined by Dr. D. Arguello and released for return to work on July 29, 1993. Claimant did not show up for work until

July 30, 1993.

On August 6, 1993, the Claimant again complained about pain in his lower back at which time his supervisor took the Claimant to see Manager Track Maintenance R. Loftin. Mr. Loftin questioned the Claimant about the pains in the Claimant's back and whether or not he had sustained an injury on-the-job. Through an interpreter, the Claimant answered that he was suffering from arthritis in his back.

On August 11, 1993, an "unidentified person" on behalf of the Claimant left an accident report alleging an on-the-job injury. Subsequently, the Carrier charged the Claimant with failure to timely report a personal injury and falsification of a personal injury. A hearing into the charges followed and the Claimant was found guilty and dismissed from service on September 2, 1993.

The parties not being able to resolve the issue, this matter now comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant violated Rule 4004 by failing to promptly report a personal injury that occurred while on duty on Carrier property. In addition, we find that the Claimant was also guilty of violating Rule 607(4) relating to dishonesty because he initially informed supervision that his back pains were the result of a chronic problem, and subsequently stated in a claim form that his back problems resulted from an on-the-job personal injury.

The facts of this case are really not in dispute. The Claimant asked for time off on July 28, 1993, to see a doctor. He returned on July 30, 1993, and did not mention his back. He first complained about a back problem on August 6, 1993, but at that time he stated that the back problem did not result from any accident but rather he was suffering from chronic rheumatism or some type of arthritis. It wasn't until August 11, 1993, that the Carrier finally received a formal notification that the Claimant had been allegedly injured on the job on July 26, 1993, which was 16 days prior to the notification to the Carrier.

This Board finds that the Carrier properly sent the Claimant a notice of investigation on August 12, 1993, after it believed that there may have been a violation of its rules by the Claimant. This Board also finds that the Claimant was properly found guilty of violating Carrier Rules relating to the prompt reporting of injuries on the job. It is fundamental that a Carrier has a right to require prompt reporting of injuries on the job in order to protect itself from both fraudulent claims and from charges by its own insurance companies that there was not prompt notification. The reasons for all of this do not have to be restated in this Award. However, numerous Boards have upheld Carrier rules to that effect on a variety of Carriers. In this case, the Claimant had originally informed the Carrier that he was suffering from a chronic problem not an injury problem. He later changed his story. There is certainly sufficient evidence that the Claimant did not promptly report the injury nor was he truthful with the Carrier when he did report.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

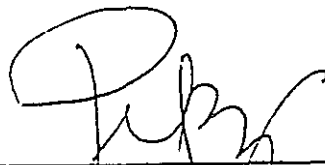
Although the Claimant in the case at hand had been employed by the Carrier for over 12 years, this Board cannot find that the Carrier's action in terminating the Claimant for the dishonesty and the rule violation requiring prompt reporting of an accident on the job, was unreasonable, arbitrary, or capricious. The Carrier has a right to expect honesty from its employees as well as the prompt reporting of any accidents. Although the Organization has argued that the Claimant had difficulty with the English language, it appears in his record that in 1982 he had reported straining his back muscles. Also, it appears that he received adequate assistance with interpreters when he was having his conversations with the supervisors. Those are the same conversations in which he was dishonest with the supervisors by indicating that the back problems that he was experiencing on August 6, 1993, were the result of a chronic problem and made no mention whatsoever of his alleged injury on July 26, 1993. Therefore, this Board concludes that the Claimant had sufficient knowledge of English in 1982 and 1993 to discuss back problems. He simply did not do it honestly in 1993.

Consequently, this Board must find that the Carrier did not act arbitrarily, capriciously or discriminatorily when it terminated the Claimant for the rule violations

involved here. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

DATED: _____

DATED: _____