

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 19

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on April 7, 1999, Mr. C. Highfill was dismissed from service for allegedly violating Safety Rule 1.4.7, Physical Exertion, on resulting in the Claimant allegedly sustaining a personal injury on March 30, 1999. Following a hearing, the discipline was reduced to a 35-day Level-S suspension.

2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. Ellis (sic) shall be reinstated with seniority, vacation, all other rights unimpaired, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, on March 30, 1999, filed an EMPLOYEE PERSONAL INJURY/OCCUPATIONAL ILLNESS REPORT stating he twisted his back with a load and incurred a lower back sprain that he would treat with over-the-counter pain medication.

On the same day of the sprained back, a reenactment occurred to determine just how the sprain occurred. Claimant was totally up-front with what he did and how he did it. On April 7, 1999, Claimant was given a letter advising his services were terminated. The letter was signed by the Division Engineer.

Claimant requested an investigation and the same Division Engineer who authored the

Page 2

Award No.
Case No. 19

dismissal letter, issued the notice of charges letter, conducted the investigation and then issued the discipline letter.

Claimant's representative objected to the Division Engineer holding the investigation after he had issued the dismissal letter. The representative's objection is valid. The Division Engineer had already determined Claimant was in violation of Safety Rule 1.4.7, Physical Exertion, before he held the investigation. The Division Engineer should not have conducted the investigation, nor should he have issued the letter of discipline. Such actions do lend support to the representative's claim of not being offered a fair and impartial investigation.

It is also evident that the Carrier failed to furnish substantial evidence of Claimant's culpability for the charges assessed.

During the reenactment, Claimant's testimony was entirely candid, given freely without duress. He told it like it was. For his forthright testimony, he was rewarded with a dismissal. The reenactment is to establish what happened and possibly come up with a solution so that in the future Carrier can train others to prevent further occurrences.

Ironically, this was a band-aid or first aid report instituted to have a report of any and all strains, sprains, bumps and bruises that do not immediately result in lost time, and in fact, until Claimant's dismissal on April 7, 1999, he had lost no time because of the injury.

In the on-properly handling, the Carrier alleged Claimant admitted violation of the Safety Rule, but this Board does not agree. The following questions and answers between the Interrogating Officer and Claimant were as follows:

- "158. Q. Did you indicate on your Injury Report Form that you twisted when handling this load?
A. Yes, I did.
159. Q. Is this a proper lifting technique, Mr. Highfill?
A. I was not lifting whenever I twisted.

Page 3

Award No.
Case No. 19

180. Q. But, is this a proper lifting technique when handling a load, Mr. Highfill?

A. It is not a proper lifting technique, no."

Claimant merely agreed with the Interrogating Officer's persistent questioning that to twist while lifting was not a proper technique. Claimant stated he did not twist his body while lifting. It occurred when he leaned, "to the side to drop this (rail bridge) out of the bed of the truck."

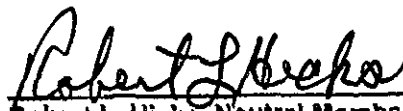
Because the investigation was not fair and impartial due to the Division Engineer wearing too many hats (he dismissed Claimant, he wrote the charges, he held the investigation and he set the discipline) and because Carrier failed to furnish substantial evidence of Claimant's culpability, the claim is sustained. Claimant is to be paid for all time lost as provided for in the Schedule Agreement, and all traces of this investigation are to be removed from his record.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Neutral Member & Chairman
Public Law Board 6103

Dated: November 14, 2000

