

PUBLIC LAW BOARD NO 6103

Award No.  
Case No. 5

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 June 3, 1996, the Carrier dismissed Mr. L. M. Rollo for allegedly providing false information and withholding information pertaining to alleged personal injury on May 20, 1996.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

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.

On May 20, 1996, Claimant sustained an injury to his right arm while loading one 36 lb. angle bar in the back of a truck. The necessary lift was about chest high due to the truck being on the rail, and with a 2" x 10" serving as a tailgate.

After an enactment of the injury, Claimant was terminated from Carrier's services on June 3, 1996, allegedly because he provided false information and withheld information pertaining to his injury.

At the investigation, Claimant related what occurred, that he did feel pain and suffered some momentary numbness in his right arm when loading the angle bar. A witness testifying in Claimant's behalf supported Claimant's testimony fully. The injury was reported promptly to the Supervisor (although the Supervisor complained that Claimant should have called via the cell phone as opposed to using the fax) shortly after the injury occurred.

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The company Doctor diagnosed the injury as inflamed bursitis. Claimant's personal physician diagnosed the injury as a "Biceps tendon rupture."

Evidently, because Claimant never advised anyone in management of his prior treatment for arthritis in his right shoulder, the charge of withholding information was levied, and this Board does not have a clue as to what led to the charge of providing false information.

The Carrier, in all discipline matters, has the burden of proof to furnish substantial evidence to sustain the charges, whatever they may be. The Carrier did not furnish that evidence. Claimant told it like it was. He made no attempt to deceive, defraud or mislead anyone.

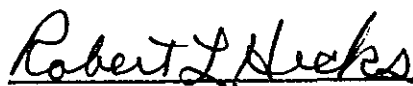
Claimant, who has already been reinstated with the right to pursue his claim, is to be paid for all time lost in accordance with practice on the property, and all traces of this Investigation are to be removed from his record.

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 postmark date the Award is transmitted to the parties.

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

Dated:

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