

**BEFORE PUBLIC LAW BOARD NO. 6152**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY**

**Case No. 5**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Trackman Larry L. Reisner for his alleged failure to properly file a personal injury report and alleged falsification of the personal injury report submitted on August 30, 2000 was without just and sufficient cause, based on unproven charges, in violation of the Agreement, arbitrary, capricious, unwarranted and excessive (Carrier's File CCP-134-00-4).
2. As a consequence of the violations referred to in Part (1) above, Trackman Larry L. Reisner shall be allowed the remedy prescribed in Rule 35(g)."

**FINDINGS:**

Claimant L.L. Reisner was employed by the Carrier as a Trackman during the time period relevant to this matter.

On September 7, 2000, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility in conjunction with the Claimant's alleged failure to properly file the personal injury report that he submitted on August 30, 2000, and/or whether the personal injury report he submitted on August 30, 2000, is factual. The hearing took place on October 2, 2000, and the Claimant was found guilty of submitting a personal injury report on August 30, 2000, that violated Operating Rules C, D, and I, as well as General Safety Rule G-10. As a result, the Claimant was dismissed from service effective October 13, 2000.

The Organization filed the instant claim on behalf of the Claimant, challenging his

dismissal from service.

The Carrier asserts that the results of its investigation establish that the Claimant improperly filed a fraudulent personal injury report. While Carrier rules require that all injuries are to be immediately reported to a company officer, the Claimant stated only that he thought he mentioned his injury to his foreman and Assistant Roadmaster Boulting, but the Claimant cannot give the exact date that the injury occurred. Moreover, Boulting testified that the Claimant never mentioned a personal injury to him. The Carrier argues that there is ample evidence to support the charge that the Claimant improperly submitted an injury report that was far from a factual description of the alleged injury to his back. The Claimant did not report his alleged injury in accordance with Carrier rules. The Carrier contends that the Claimant received a fair and impartial investigation, and that investigation established that the Claimant had violated Carrier rules. *Under these circumstances, the Carrier argues that the Claimant's dismissal was* appropriate, and the Carrier asserts that this Board cannot interfere with the Carrier's disciplinary action in this case. The Carrier contends that the instant claim is without merit, and it should be denied in its entirety.

The Organization contends that this situation involves an injury that took a long time to manifest itself; the Claimant was not aware that he had sustained an injury, due to the performance of strenuous physical labor as a trackman on a rail gang, until the injury manifested itself on August 24, 2000. The Organization further asserts that there is nothing in the record that indicates the Claimant was other than straightforward and honest with respect to this injury. The Organization maintains that the Carrier did not present any evidence of fraud or dishonesty, and the Carrier therefore has failed to meet its burden of proof in this proceeding. The

Organization accordingly argues that the Claimant should be returned to service and is entitled to the remedy prescribed in Rule 35(g), which is to have the charges stricken from the records and to be made whole for all losses.

The parties being unable to resolve this issue, this matter came 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 was guilty of failing to properly file a personal injury report and falsification of the personal injury report. The record reveals that the Claimant filed the personal injury report on or about August 30, 2000, and indicated that he was injured on the job, but there was no date of accident listed. The Claimant does not know how the injury occurred, but states simply "very little pain at first and as weeks went by, got worse." The Claimant also stated that the cause of the accident was "overworking muscle's (sic), not enough breaks in the day." The Claimant also stated that the alleged accident was not caused by defects in tools or equipment. Finally, where it asks what company officer the Claimant notified of the accident, the Claimant states "Steve Boulting" and then states "not sure."

There is no question that this Claimant has no idea how he was injured and, by filing this report, was attempting to throw the responsibility for that injury on the Carrier. The Carrier has rules that require the prompt filing of personal injury reports so that it can be immediately determined what caused the accident and how to prevent the accidents in the future. The Claimant in this case may have incurred some type of injury at home or at work, but he did not promptly file the report and, therefore, it will never be determined how it occurred.

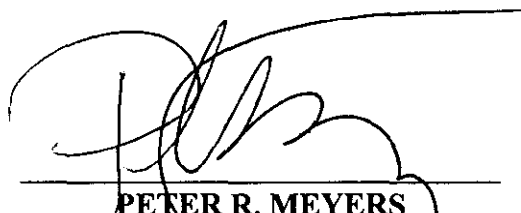
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will


not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.


It is fundamental that falsification of an injury report is a dismissible offense. Numerous Boards have held that falsification of an on-the-job injury report is a legitimate reason to terminate employees. The Claimant in this case engaged in serious wrongdoing. Given his five years of seniority, this Board cannot find that the Carrier's action by terminating the Claimant for this serious violation was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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ORGANIZATION MEMBER  
DATED: 7-1-02

  
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CARRIER MEMBER  
DATED: 7-1-02