

PUBLIC LAW BOARD NO. 6299

Case No. 6

Award No. 6

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

MONTANA RAIL LINK, INC.

STATEMENT OF CLAIM:

Claim on behalf of Engineer G. A. Wilkinson for removal of discipline (45 day suspension) from his personal record and that he be compensated for all time lost including attendance at the January 17, 1994, fact finding.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The material facts that led to this claim are for the most part undisputed. On November 27, 1993, the Claimant sustained an off-duty injury. He was opening a gate when his left leg slipped and he smashed the left side of his neck against the gate post. The Claimant lost work because of this injury.

On December 9, 1993, Trainmaster Kautzman telephoned the Claimant at home and advised him that he was required to complete an F-27 Off Duty/Off Property Incident Report. The Claimant started as F-27 Report on December 9 and completed it on December 10, 1993. The Carrier received the Report on December 13, 1993.

The F-27 Report the Claimant submitted was perplexing to the Carrier. In *blue ink*, the Claimant explained about hitting his head against the gate post while off duty. Then in *black ink*, he suggested that the old seats on the Montana Rail Link (MRL)

locomotives might have caused the damage to his disk. This, of course, may have rendered the Carrier responsible for the Claimant's damage to his disk.

Because of this confusion, the Carrier decided to convene a fact finding. On December 17, 1993, the Claimant was notified to attend a fact finding on December 22, 1993, to determine the facts attendant his reputed off-duty injury.

On December 20, 1993, the Claimant telephoned Superintendent Grewell and expressed his surprise by the fact finding notice he received. The Claimant assured Superintendent Grewell that he did not intend to suggest that his injury was caused by defective locomotive seats. He explained that strong pain killing medication he was taking when he completed his F-27 Report was the cause of this confusion. He made it clear to Superintendent Grewell that the Carrier was not responsible for the damage to his disk. The Claimant offered to submit a new injury report making it clear that his injury was not related to his employment with MRL.

The Carrier chose to proceed with a fact finding which was held on January 17, 1994. The Claimant reiterated what he told Superintendent Grewell during their December 20 telephone conversation. On March 8, 1994, the Claimant was assessed a 45 day suspension for his purported violation of Rule 607 of the MRL General Code of Operating Rules, specifically his alleged dishonesty in reporting his off-duty personal injury.

The Claimant has convinced this Board that he did not willfully intend to misrepresent the nature of his November 27, 1993, off-duty injury. He explained that he was taking strong pain killer medication on December 9-10, 1993, when he completed the F-27 Report, and this caused his report to be confusing. It is noteworthy that the Claimant was hospitalized on December 10, the day he completed the report, and underwent surgery to his neck.

In the light of the foregoing circumstances, this Board is not persuaded that the Claimant was dishonest when he completed his F-27 Off Duty/Off Property Incident Report. Rather, evidently he was not fully coherent due to pain killing medication he was taking. Therefore, the discipline assessed the Claimant on March 8, 1994, for his reputed dishonesty must be removed from the Claimant's personal record.

The Claimant must also be made whole for all time lost if he had been released to return to work following his surgery. If he had been medically released to return to work by March 8, 1994, when his 45 day suspension began, he is entitled to compensation for all time lost between March 8 and April 21, 1994. If he had not been released to return to work by March 8, he is not entitled to any compensation since he would not have been able to perform service during the period of his suspension.

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AWARD: Claim sustained to the extent indicated in the Findings.

Carrier is directed to make the within Award effective
on or before thirty (30) days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

Dated:

