

PUBLIC LAW BOARD NO. 1532

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim in behalf of former Trackman A. T. Ortiz Colorado Division, for reinstatement to service with seniority, vacation and all other rights unimpaired and compensation for any wage loss he may have as a result of his removal from service November 13, 1979.

FINDINGS: This Public Law Board No. 1532 finds that the parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was a member of Extra Gang 62. On October 10, 1979 trackman A. A. Sandoval told the foreman that he understood the claimant would not be coming back to work because he had hurt his back on the job. From that date to the time of the investigation, no other member of the gang relayed any information regarding a back injury to the claimant.

The foreman conveyed this information to the roadmaster and the track supervisor. They contacted the claimant and were told he was off duty because he had suffered a back injury. The claimant was absent from duty beginning October 18, 1979.

The claimant was notified to attend a formal investigation November 6, 1979 to develop all facts and place responsibility in connection with his alleged absence from duty without proper authority beginning October 13, 1979 and his allegedly falsifying information given to Doctors Johnson and Kosicki on October 3, 1979 (claim of an on duty injury). Pursuant to the investigation the claimant was dismissed from the service of the Carrier.

The Carrier contends that the claimant was absent from duty without authority and that the evidence also establishes that the claimant gave false information to two doctors regarding an alleged on duty injury.

The transcript of 56 pages, as well as the exhibits introduced by the parties, have been carefully studied. There is a great deal of conflict in testimony. There is no evidence which establishes that the claimant advised the foreman he was injured on the job. The claimant did testify that his back hurt, but the evidence does not establish that he was injured on the job.

The claimant also testified that he did not tell his foreman that he wanted the next day off. The claimant testified that he told the foreman that he might miss the next day in order to see a doctor. The claimant later testified that he did tell his foreman that he had been hurt.

The claimant failed to fill out an injury report and did not at any time request a leave of absence. The claimant testified that he understood it was his responsibility to protect himself with a request for a leave of absence. The claimant testified at the hearing that he had been absent without proper authority since October 18, 1979 (Page 12 of Transcript).

The Carrier introduced a statement by the foreman, and the Organization objected to the entire statement, but such was submitted into the record. This statement would be inadmissible except for the fact that the foreman appeared in person and testified and was subject to cross examination. The foreman admitted that he had authorized the claimant to be off October 9.

A special agent for the Carrier testified that the claimant reported to the depot on October 15, 1979 claiming an on duty injury. He further testified that the claimant could not recall if the accident occurred at Sands or Gisc on October 8, 1979.

The track supervisor, who was the claimant's immediate supervisor, testified that he had no knowledge of a back injury to the claimant and that the claimant never requested a leave of absence.

A fellow member of the gang, A. A. Sandoval, testified that he heard the claimant tell foreman Damrell that: "If I don't feel right, I won't come to work tomorrow," but did not remember hearing the claimant say he had hurt his back.

Another fellow member of the gang testified that he heard claimant advise the foreman: "Willie, I don't think I'll work tomorrow. I am going to see the doctor to see what's wrong with my back." He also testified that he heard the claimant tell the foreman that his back was bothering him because early in the day they had been unloading ties.

Evidence indicates that during the time the claimant was laying off, he was driving in his automobile at 2:30 a.m. The claimant further admitted he was in a car accident shortly after October 8, 1979.

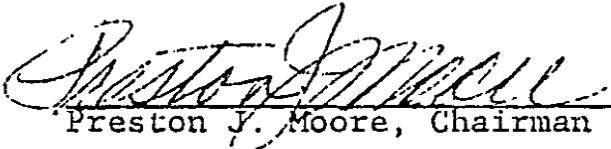
The evidence clearly establishes that the claimant failed to file an accident report as required by the rules of the Carrier.

The Carrier contends that the claimant's car was totaled in the accident the claimant was involved in after October 8, 1979, but

there is no evidence to that fact, and interrogation of the claimant did not pursue the extent of the damage to the automobile in that accident.

The claimant had a poor record, and there is no evidence which would justify overruling the decision of Carrier.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

Dated August 19, 1980