

PUBLIC LAW BOARD NO. 1760

Award No. 138

Docket No. 138

Carrier File MW-FTW-90-97-SG-626

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railroad Company
 (former Wabash)

Statement

of Claim: Claim on behalf of R. J. Bright requesting that he be returned to work with all rights and privileges restored and be paid for all time lost on account of his dismissal in connection with failing to properly report an injury and falsification of an alleged on-duty injury.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

The Claimant's Supervisor, on December 20, 1991, was contacted by a District Claim Agent making an inquiry in connection with an alleged on-duty injury to Claimant Machine Operator R. J. Bright. Such allegation was contained in the letter from a St. Louis attorney. The supervisor being unaware of any on-duty injury on October 18, 1990 issued a letter of charge to attend the formal investigation on December 21, 1990 on the charge of:

"Failure to properly report an alleged injury, which supposedly occurred in Detroit, MI on October 18, 1990... My first knowledge of this incident was December 20, 1990."

The Claimant's St. Louis attorney obtained a Temporary Restraining Order (TRO) effective January 31, 1990 prohibiting the holding of the investigation as scheduled. That TRO was not removed until August 1991.

In the interim, the Claimant had applied for a position on a T&S gang working on the territory of Norfolk Southern Railway and he took a return to work physical examination. As part of that process the Claimant filled out a form wherein he stated that he had not had a prior back injury. He also failed to reveal that he had ever been injured or that he filed suit due to any injury. The Organization on January 7, 1991 had requested a postponement of the investigation. The second postponement of February 1, was mutually to an indefinite date, because of TRO. When the Carrier issued a letter postponing the investigation, it advised the Claimant that he was being held out of service pending a hearing.

As a result of the investigation, finally held on October 24, 1991, the Carrier concluded therefrom that the Claimant was culpable. He was dismissed from service as discipline therefor.

General Safety Rule 1000 reads:

"An employee sustains a personal injury while on duty must report it, before leaving company premises, to his immediate supervisor or to the employee in charge of the work, who will promptly report the facts through channels.

If an employee at any time marks off or obtains medical attention for an on-duty injury or occupational illness, he must promptly notify his supervisor."

General Rule N reads:

"When any person is injured as a result of an accident, emergency medical assistance must be called if needed.

Every accident resulting in injury, death or damage to property must be reported to the proper authority by the quickest communication available, and a written report on the prescribed form must be submitted promptly. The report must include the name and address of each injured person and describe the extent of injury. Names and addresses of all persons at the scene are required, whether or not they admit knowledge of the accident.

At a crossing accident, the conductor or employee in charge must try to locate witnesses who can testify about engine whistles or bell signals and about the functioning of any crossing gates or flashing light signals. License tag numbers of vehicles observed near the crossing must also be reported."

A Temporary Restraining Order (TRO) as well as a mutual agreement to postpone the investigation is a reasonable rationale for the postponement of the hearing beyond 30 days. Rule 30 permits of holding an employee under investigation out of service. The reasons advanced therefor in this case are not inconsistent with the exercise of that right.

While the Carrier has a burden of calling pertinent witnesses there are limitations thereof and the Organization has a burden, at least to the extent of identifying the witnesses and what each can testify to that then puts the request on the record. A review of such record will permit of a conclusion whether the Carrier in refusing to call such

witnesses was acting at its peril. That record was not in evidence in this investigation.

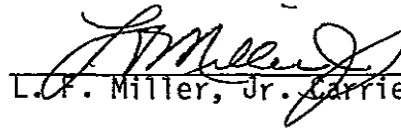
There was sufficient evidence adduced to provide the basis for the Carrier to conclude the Claimant was guilty of the charge placed against him. The Board is not the original trier of the facts. The Board examines the record to see whether compliance was had with the discipline rule, whether there was sufficient evidence adduced to support the Carrier's conclusion and whether the discipline assessed was unreasonable. The Carrier, as the trier of facts, determines the conflicts of the evidence, weighs the credibility aspects and any abuse of such discretionary rights was not demonstrated. The Board would note that was conflict and it is clear that some persons lied.

The discipline imposed in light of the rule and its application is not unreasonable. Therefore, this claim will be denied.

Award: Claim denied.



S. A. Hammons, Jr., Employee Member



L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued January 21, 1993.