

PUBLIC LAW BOARD NO. 1760

Award No. 141

Case No. 141

File No. MW-DECR-91-70

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

Statement  
of Claim: S. A. Haggenjos-Dismissal - Failure to report and falsifying  
injury.

Findings: The Board has jurisdiction by reason of the parties  
Agreement establishing this Board therefor.

The Claimant, a Machine Operator, on December 2, 1991,  
was charged with:

- "1. Violation of General Safety Rule 1000.
2. Falsifying an alleged on duty injury on May 21 or 22,  
1991.

In that you claim an on duty injury occurred on May 21 or  
22, 1991 at Lafayette, Indiana, and you subsequently  
received medical attention allegedly for the injury; but no  
injury report was made on May 21 or 22, 1991, and no  
supervisor was notified of your obtaining medical attention  
for an on duty injury."

Carrier concluded Claimant to be culpable and dismissed  
him from service as discipline therefor as a result of the  
investigation held on March 10, 1992.

The Claimant was accorded the due process to which  
entitled.

There was sufficient evidence adduced to support the  
Carrier's conclusion as to the Claimant's culpability.  
Clearly the Claimant had a herniated disc as diagnosed in  
November 1991. What is not so clear is that an accident  
involving the Claimant was witnessed or was reported on May  
21, or 22, 1991. True, his foreman did admit that the  
Claimant had spoken to him about his leg bothering him but  
that conversation occurred in early June 1991. The record  
showed that the Claimant did not want to fill out an injury  
report and continued to work without any restriction through  
November of 1991. Also, that the Claimant engaged in hiking  
and water skiing subsequent to May of 1991. The Claimant

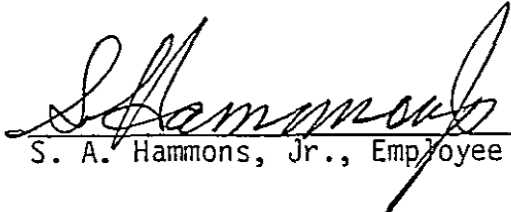
sought treatment from a chiropractor on September 27, 1991 at his own expense. Thereafter, the Claimant contacted supervision about an on duty injury around November 18, 1991.

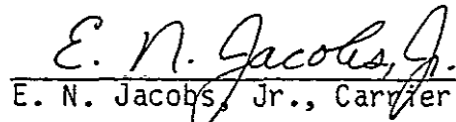
There is no question but that common sense, fairness and equity requires that injuries be promptly reported to proper authority to permit adequate treatment, speed up employee fitness and permit the awareness and protection of Carrier liability. Rule 1000 was published for furtherance of that purpose. Adequate treatment fitness and warranted liability.


The Claimant is a very productive employee. The Board, despite some doubtful impressions created by the evidence, will accord the Claimant a last chance opportunity. He will be reinstated to service with all rights unimpaired but without pay for time lost and will be subject to passing a return to work physical examination.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
S. A. Hammons, Jr., Employee Member

  
E. N. Jacobs, Jr., Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued December 30, 1993.