PUBLIC LAW BOARD NO. 1760

Award No. 155

Case No. 155
File MW-FTW-93-25

Parties to Dispute: Brotherhood of Maintenance of Way Employes and Norfolk & Western Railway Company

Statement of Claim: Claim on behalf of K. V. Hillard requesting reinstatement and pay for time lost as a result of his dismissal for violation of Rule Gr-6 (absenting himself from his assignment on two occasions without permission) and for making false statements in connection with an alleged on-duty injury.

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

Claimant, Machine Operator K. V. Hillard, was notified on April 6 to attend a formal investigation on the charge:

"...for your making false statements concerning an alleged on duty injury you reported occurred on March 31, 1992 at approximately 7:15 AM at Coffeen, Illinois.

You will also be charged with a violation of Safety and General Conduct GR-6, for absenting yourself from duty without permission on March 31, 1993, at approximately 2:00 PM and again on March 31, 1993 at approximately 5:00 PM."

Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support the conclusions reached by the Carrier as to the Claimant's culpability. There were two separate charges. The first involved making false statements in connection with an alleged on-duty injury. The second charge involved absenting himself from duty without permission. The Claimant did, in fact, suffer an abrasion upon his forehead. However, the manner in which it was reported clearly supports the conclusion of making false statements. The Claimant gave numerous conflicting accounts as to how he incurred the injury. The conflict ranged from that he was pouring oil into his machine and fell off the back of the machine to the ground, to that he was putting oil in the machine, slipped and fell to the ground. Around lunch time

it changed again when he advised the foreman that his back was bothering him. The Claimant then advised the Foreman that he did not fall off the machine, as previously stated. Rather when in the process of falling he caught himself on the hydraulic hoses on the back of the hydraulic tank. In the interim another machine operator had picked up the empty oil can. Another change occurred when the telephone conversation was had with the Division Engineer who told the Claimant that there were discrepancies in his story. The Claimant advised that he had already finished pouring the oil and fell as he was getting down from the machine. However, at the hearing, the Claimant presented the facts of the injury as after he poured the oil into the machine, he turned around on the counter way, slipped and caught himself on the hydraulic hoses as he fell and when swinging down he hit his head on the hydraulic tank and then came down on the ground.

The Claimant's multiple accounts of how he received the injury prohibited the Carrier from taking any immediate action to prevent employees engaging in the same type of work that permitted or caused the injury. The other incident was the use of the telephone shortly after lunch and again in the late afternoon. The Claimant's first use of the phone had to do with contacting his attorney about a personal and not a company related matter. The second call involved Claimant just stopping the operation of his machine. He then sat in the Equipment Supervisor's truck well before and up until quitting time.

The problem arising from making a phone call in its impact on others. The call to his attorney was not a matter as to the making of that phone call. Rather, the problem arose as to when the phone call was to be made. MofW work is a coordinated effort involving several planned operations going on simultaneously. Machinery and men are coordinated. It is necessary and mandatory that planning and use of both men and machines is maximized to achieve M&W goals. The Claimant's machine, a tie crane, was the lead machine and it had a radio. Consequently, if the Claimant needed to absent himself at any time, he merely needed to have contacted a supervisor by utilizing his radio and be granted permission to use the telephone either immediately or at some short time thereafter, necessarily not at any time that the Claimant wanted but rather at the time that the supervisor believed consistent with operation requirements.

The supervisor testified that the Claimant did not have permission but that he could have by making arrangements to have the time off. Therefore, there is no question as to the Claimant quitting early and then sitting in the

Equipment Supervisor's truck. There is no question but that incident required permission.

It is quite possible that the Claimant could have injured himself in a manner and at a place and time contrary to what he was attempting to falsely explain. The number of changes in his story attacks the Claimant's credibility as to the injury. We are not saying that the Claimant was not injured. The Board is saying that the injury is not as stated by the Claimant. One of his explanations might have been true but assertion of the others made all but that one false. The Carrier was quite correct in drawing the conclusion of falsification. As we pointed out in our Award 137:

"Dismissal is not unreasonable discipline for an act of an on-duty injury. That act is a very serious offense. Such proven conduct is in and of itself dishonest and is cause for severe discipline. Dishonest conduct violates a basic tenet to the employer-employee relationship. The Carrier need never be burden by any such employee. See Award 7 and 77 of PLB 1838, Awards 33, 34 and 46 of PLB 3445 on this property are clearly supported of such findings."

In the circumstances, the claim is denied.

Award: Claim denied.

S. A. Hammons, Jr., Employee Member

E. N. Jacobs, Jr., Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued *July 30, 1994.*