

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 109

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Laborer M. A. Arreola for his alleged:
 - a) violation of NS Safety and Conduct Rule 1000, in that on August 26, 1996, you reported to District Claim Agent J. B. Venturino that you had sustained an on-duty injury August 7, 1996. In addition, you sought and received medical attention for this alleged on-duty injury and failed to promptly inform your immediate supervisor.
 - b) conduct unbecoming an employee for falsification of an alleged on-duty injury and for providing false and conflicting statements in connection with an alleged on-duty injury that supposedly occurred on August 7, 1996, in that you reported to Assistant Track Supervisor D. L. Thomas on August 7 and 9, 1996, that you did not sustain an injury; however, on August 26, 1996, you reported to District Claim Agent J. B. Venturino that you sustained an alleged on-duty injury. (Employee's Exhibit A-1.)

was without just and sufficient cause, in violation of the Agreement, and based on unproven charges. (Carrier File MW-FTW-96-41A.)

2. As a result of the violation referred to in Part (1) above, Claimant M. A. Arreola shall now be reinstated to service with all seniority, vacation, and other rights unimpaired, and he shall be paid for all monies loss suffered by him beginning August 9, 1996, and continuing until his reinstatement to service.

FINDINGS:

Claimant M. A. Arreola was employed by the Carrier as a laborer at the time of the claim.

On August 30, 1996, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that he violated NS Safety and Conduct Rule 1000 in that he failed to report an on-duty injury allegedly having occurred on August 7, 1996, when he reported it on August 26, 1996; and, in addition, failed to promptly notify Carrier supervision that he sought medical attention for the alleged August 7, 1996, injury, and made false statements concerning the alleged August 7, 1996, on-duty injury.

After many postponements pending the Claimant's obtaining a medical evaluation on his ability to participate in a formal investigation due to his alleged injury, the investigation was held on May 9, 1997, without the Claimant's presence. On May 20, 1997, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of dismissal from all service with the Carrier.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization contends that the Carrier violated Rules 22-(A) and (E) of the parties' working agreement dated February 1, 1951, and that the Claimant did report his injury on the date of the occurrence but that, as a result of that injury, was in a confused state, disoriented, and unable to accurately respond to questioning following the occurrence. The Organization argues that the Carrier wrongfully harassed and intimidated an injured employee. Finally, the Organization contends that the Carrier failed to conduct a fair and impartial hearing, failed to allow the Claimant's attorney to be present, failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and that the discipline assessed was unjust, excessive, and an abuse of the Carrier's discretion.

The Carrier denied the claim based on the evidence in the record, contending that the Claimant offered conflicting versions of the August 7, 1996, incident and did not comply with his obligation to timely and truthfully report the on-duty injury sustained by him. The Carrier contends that sufficient evidence was adduced at the investigation substantiating the Claimant's guilt, warranting his dismissal, and that the Claimant was entitled to be represented by a craft representative and not an attorney.

The parties being unable to resolve the issues, this matter came before this Board.

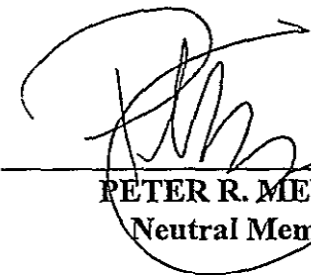
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of not reporting an alleged on-duty injury and providing false and conflicting statements in connection with such injury.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

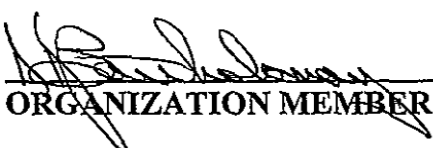
Given the seriousness of the wrongdoing in this case, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.

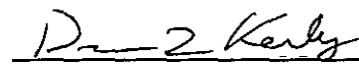


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 3-10-00



CARRIER MEMBER

DATED: 3-2-00