

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 110

STATEMENT OF CLAIM:

Claim on behalf of R. F. Krause, Jr., for reinstatement to service with seniority and all other rights unimpaired, with payment for all wage loss suffered beginning September 26, 1996, and continuing until his reinstatement to service, as a result of his dismissal following a formal investigation held on November 22, 1996, for failure to properly report an alleged injury and falsifying such alleged injury. (Carrier File MW-FTW-96-46.)

FINDINGS:

Claimant R. F. Krause, Jr., was employed by the Carrier as an electric welder at the time of the claim.

On October 3, 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 General Conduct Rule 1000 in that he failed to report an on-duty injury allegedly having occurred on September 12, 1996, when he reported it on September 26, 1996, thereby failing to report that on-duty injury and making a report of such before leaving the Carrier's premises on September 12, 1996; and, in addition, failing to promptly notify Carrier supervision that he sought medical attention for the alleged injury, and making false statements concerning the alleged September 12, 1996, on-duty injury.

After two postponements, the hearing took place on November 22, 1996. On December 2, 1996, 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 Claimant was a consistently commended employee who did not willfully violate any rules or offer false statements, that the injury he received was a direct result of the performance of his duties, and that the Carrier violated Rules 22-A and E of the parties' working agreement and the Railway Labor Act when it denied the Claimant to be represented by the representative of his choice, thereby violating the Claimant's due process rights. The Organization further contends that the Carrier failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, 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, under the parties' agreement, the Claimant was entitled to be represented by a craft representative and not an attorney, that the Claimant was aware of his back condition on the date in question and was obligated, under the rules, to properly and timely report it instead of missing work, seeking medical attention, and finally reporting the incident on September 26, 1996.

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

Following the hearing, the claim was settled and this matter is dismissed.

This case was heard in oral argument on April 23, 1999. Subsequent to the oral argument, in August of 1999, the Board was informed by the Organization that the Claimant had settled his FELA claim and withdrew this case. Consequently, this Board has no choice but to dismiss this claim.

AWARD:

The claim is dismissed.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 2-15-00



CARRIER MEMBER

DATED: 2/15/00