

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 121

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Laborer S. A. Walker for allegedly falsifying an injury report on February 20, 1998, was without just and sufficient cause, based on unproven charges, and in violation of the Agreement (Carrier's File MW-FTW-98-08-LM-40).
2. As a consequence of the violation referred to in Part (1) above, Laborer S. A. Walker shall now be reinstated with seniority, vacation, and all other rights unimpaired and he shall be paid for any and all monetary loss suffered beginning February 21, 1998, and continuing until such time as he is reinstated.

FINDINGS:

Claimant S. A. Walker was employed by the Carrier as a laborer at the time of the claim.

On March 10, 1998, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that he falsified an injury report on February 20, 1998, for an incident that allegedly occurred in Warsaw, Indiana, at or near MP PC 358.6, in which he alleged a back injury. The Claimant was to be held out of service pending the outcome of the investigation.

On March 12, 1998, the Organization notified the Carrier that it could not proceed with the investigation on behalf of the Claimant until it received specific information in regards to the charge against the Claimant in order to prepare a reasonable defense for the Claimant. The Organization also charged the Carrier with harassing the Claimant in violation of 49 C.F.R.

225.33 and Safety Department Bulletin dated December 30, 1996.

On March 17, 1998, the Carrier notified the Organization that its notice of March 10, 1998, was sufficient and that the Claimant was properly cited. On March 23, 1998, the Organization again reiterated its position.

After two postponements, the hearing took place on April 6, 1998. On April 17, 1998, the Carrier notified the Claimant that he had been found guilty of the charges and was being dismissed from the service of the Carrier.

The Organization filed a claim on behalf of the Claimant challenging his dismissal, contending that the Carrier harassed and intimidated the Claimant through the proceedings. The Organization further contends that the Carrier failed to conduct a fair and impartial hearing and violated Rules 22(A) and (E), failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and assessed discipline that 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 evidence adduced at the investigation clearly established that the Claimant falsified an injury report in an attempt to defraud the Carrier.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case; and we find that although the Claimant did delay in the reporting of his injury, there is no evidence that he falsified an injury report on February 20, 1998. The record reveals that on

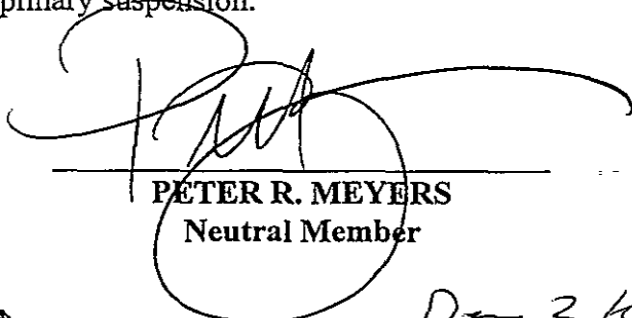
the date in question, the Claimant reported that he had a pain in his side, but did not follow through with the rest of his responsibilities.

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.

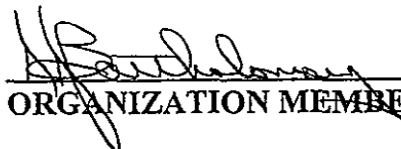
The record reveals that this Claimant is a 21-year employee with a very good record. Given that lengthy seniority and the fact that he simply was negligent and did not willfully falsify an injury report, this Board orders that the Claimant be reinstated, but without back pay. The period that the Claimant was off shall be considered a lengthy suspension.

AWARD:

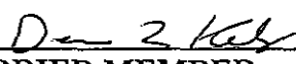
The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
 Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 2-15-00

DATED: 2/15/00