PUBLIC LAW BOARD NO. 1838

Award No. 71

Case No. 71
Carrier File MW-LY-82-5

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

Statement of Claim: Former employe, P. A. Daniels, P. O. Box 333, Drakes Branch, Va. 23927, was dismissed account of his failure to report an injury and making false statements concerning previous back problems. Employes request Mr. Daniels be reinstated and be paid for any and all lost time, his seniority rights, vacation rights and all other rights unimpaired beginning March 8, 1982.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant began service with Carrier on August 24, 1981. On November 13, 1981 Claimant alleged that he received a back injury. Claimant went to see a physician on November 14th, whereafter Claimant alleged that he had been informed by the treating physician that he had a ruptured disc. Claimant allegedly never reported the injury to any supervisor promptly as required by Carrier's Safety Rule 1001 which, in pertinent part, reads:

> "1001. Employees must report personal injuries to their immediate supervisor or the designated employee immediately in charge of the work before leaving the Company's premises. The supervisor or designated employee in immediate charge of the work is responsible for reporting all personal injuries witnessed by the

> supervisor or designated employee or known to the supervisor or designated employee to insure that reports will be completed and distributed promptly in accordance with Company rules.
>
> Failure to report a personal injury by the injured person or the employee in immediate charge of the work may result in disciplinary action.
>
> Every case of personal injury, accident, or damage to property must be reported as soon as possible by the quickest available means of communication and a written report on the prescribed form rendered promptly. Such reports must contain full details and names and addresses of all witnesses and all particulars of the occurrence."

Under date of February 1, 1982, Claimant by letter from Carrier was advised, in pertinent part:

> "You are hereby notified to report to office of Roadmaster J. L. Ashwell, Kinney, Virginia, 10:00 A.M., Wednesday, February 17, 1982, for a formal investigation in connection with your violation of Rule 1001 of the Norfolk and Western Railway Company's Book of Safety Rules wherein you failed to report injury of November 13, 1981, to your supervisor.
>
> This investigation is, also, being held to determine your responsibility concerning fraudulent statements concerning previous back problems prior to employment with the Norfolk and Western Railway Company..."

As a result of the investigation Claimant was dismissed from all service of the Carrier. From that dismissal Claimant appeals.

The Board finds that the record of the investigation held at Claimant's request discloses that Claimant's immediate supervisor, Section Foreman Windsor, had a discussion with Claimant sometime around lunch time on November 13, 1981, wherein Claimant informed Section Foreman Windsor that he was "having trouble with his back and was going to take a shot for rheumatism or bursitis..". Subsequently at dinner time same date, Claimant was cautioned by Section Foreman Windsor that if Claimant had been injured he was to inform his supervisor whereupon

Claimant alleged stated "...if I got hurt I don't know nothing about it...". No CT-37 Form was made out as a result of that conversation.

Carrier called another section laborer who confirmed that Claimant complained of back pain sometime around mid-morning into the late afternoon, although Claimant never stated that he had injured himself.

Claimant testified that he had never had any prior back injury, that he began to experience back pain on the 13th without being aware of any particular incident that triggered an injury. Claimant acknowledged that he filled out the employment application listing doctors who had treated him previously. Claimant, when confronted with the reports from previous family physicians indicating treatment for back injury in 1966, 1968, 1977 and May of 1981 sought to explain the discrepancy by the similarity between his and his father's name. However, the treating physician's report all indicated a Phillip S. (Claimant's name) and not a Phillip W. Daniels.

Insofar as the charges dealing with dismissal rest upon Claimant's failure to promptly report an injury, the Board finds the proofs to be in a state of equipoise. Clearly, Claimant made a timely report to his immediate supervisor of feeling of pain, although he couldn't relate the pain to any particular injury, which is not an uncommon experience when dealing with back or low back injuries.

However, as to Claimant's culpability for making fraudulent statements concerning the injury and for making fraudulent statements on his employment application, clearly the record sets forth sufficient proof to support Carrier's conclusion of Claimant's culpability. In view of the circumstances, had Claimant been candid and forthright in his application concerning his prior medical history it is reasonable to

conclude that Carrier undoubtedly would not have hired Claimant for the position and type of work that he had applied for.

We are satisfied, based upon the proofs adduced at the hearing, that Claimant was neither candid nor forthright in the disclosure of his prior medical history, leading Carrier to rely thereon to its detriment. Carrier concluded Claimant's explanation lacked credibility and Claimant's original failure to disclose pertinent and essential medical information was intentional and fraudulent. We concur.

In view of the circumstances and Claimant's short service history with Carrier, the discipline was neither arbitrary, capricious or excessive. Therefore, the Claim will be denied.

AWARD: Claim denied.

Bryce Hall, Employee Member

J. A. Abbatello, Carrier Member

A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, March 26, 1984.