

PUBLIC LAW BOARD NO. 2774

Award No. 134

Case No. 134

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to dismiss Trackman Frederick Rucker was without just and sufficient cause and in violation of the provisions of the current agreement.
2. That claimant shall now be returned to his former position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Following an investigation, claimant was dismissed from Carrier's service by letter dated September 22, 1983, having been charged with falsifying the facts and reports involved in an alleged personal injury on July 11, 1983. The record indicates that claimant allegedly received an injury from being struck by a sledgehammer being used by a fellow employee working adjacent to him shortly prior to the lunch period on July 11. No one saw the incident. Several people gathered around claimant immediately after the alleged accident when he rushed away from the spot holding his back and people wanted to know whether he was all right. He apparently was in such pain that he could not talk for several minutes. The record indicates that claimant continued to work intermittently for the rest of the day and then asked to see a doctor. He was asked if he could wait until the next morning. On the next morning he was, indeed, taken to see a physician who treated him and told him to return for more treatment in several days. He was subsequently treated at an industrial clinic and kept out of work by the doctor for a substantial period of time (about sixty days at least).

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Carrier in its argument indicates that it was not reasonable to believe that claimant had been struck by the sledge wielded by the other employee based on the testimony and the relative location of the two employees on the day of the incident. In essence, Carrier simply did not believe claimant's testimony.

Petitioner argues that claimant's forthright testimony specified that he had been injured, that he did not see the actual blow being struck on his back and that he was in great pain. Petitioner notes the physicians kept claimant out of work for some sixty days after the accident and, furthermore, claimant readily made his medical records available to Carrier which Carrier did not choose to introduce at the investigation.

The heart of this dispute is whether, indeed, claimant falsified his report of the incident, that is, whether indeed he was injured by another employee on the day in question. Since there were no direct witnesses to the event and since the employee who allegedly struck claimant was unsure as to whether or not he had struck him, Carrier had a problem of establishing the fact that claimant's account was not to be trusted. The simplest and most direct method for establishing that claimant's tale was not reliable would have been to secure medical evidence with respect to the alleged injury. This, Carrier did not do. Carrier's sole defense was based on circumstances which it believed dealt with the physical juxtaposition of the two employees and nothing further. Carrier chose not to believe claimant, although it had no testimony directly contrary to claimant's story. The Board is left with the conclusion that Carrier has simply failed to establish by any preponderant evidence, in fact any evidence, that claimant's story was not to be believed. There simply were no facts to justify the conclusion which Carrier reached. For that reason, the claim must be sustained.

Claimant will be restored to his former position with all rights unimpaired and made whole for all losses sustained from the time he was released to return to work by the physician until such time as he is returned to work. He, of course, will be subject to a return-to-work physical examination.


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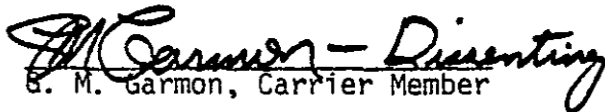
AWARD

Claim sustained.

ORDER

Carrier will comply with the award herein within
thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foote, Employee Member

Chicago, Illinois
April 30, 1985