

PUBLIC LAW BOARD 2774

Award No. 161

Case No. 161

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE The Atchison Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM "1. The Agreement was violated when the Carrier arbitrarily dismissed Trackman A.L. Sanchez on September 28, 1985 on the basis of unproven charges, said action being capricious, unwarranted and unduly harsh.

2. As a result of the aforesaid violation, the Carrier shall now be required to reinstate Trackman Sanchez to his former position with seniority and all other rights restored, with compensation for all time lost."

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.

The record indicates that on August 9, 1985 Claimant was working as a Trackman with a section gang near Raton, New Mexico. On that date, Claimant alleges that while in the process of lining track, he felt a sharp pain in his lower back. Claimant maintains that upon completion of the day he reported the matter to his Foreman, that he had a pain in his back and perhaps had experienced an on duty injury. He maintains that his Foreman paid no attention to his statement. Subsequently, the Claimant worked the entire

following week, including strenuous labor, and finally, in the late evening of August 19th, he contacted his Foreman and told him he would not be able to report for his regular assignment on August 20th. On August 20th, Claimant informed the Roadmaster and Track Supervisor that he was "going" to have to seek medical attention. On that same day, he filed an accident report. On August 21st, Claimant went to seek medical attention together with the Roadmaster and Track Supervisor. Subsequently, after further medical attention, the doctor prescribed complete and total rest for the Claimant. On September 6th, Carrier notified the Claimant of the time and place of investigation, charging him with falsification of a personal injury report and late filing of such report.

Petitioner alleges that Carrier has attempted to discredit Claimant's claim of an on duty injury which rendered him incapacitated for further meaningful employment. It is also maintained by Petitioner that Claimant received no attention until he laid off work and insisted upon medical attention. In short, Petitioner insists that Carrier has not borne its burden of proof and that there was no guilt by Claimant in this situation.

Carrier maintains that Claimant Sanchez alleged an on duty injury on August 9th, but failed to report the injury until August 20th, some 11 days later. Furthermore his Foreman was not notified of

any such injury or possibility of any such injury on August 9th as claimed by Mr. Sanchez. Carrier claims that there was no justification for Claimant's failure to report the injury and that he was guilty of making false statements regarding such personal injury. Carrier also relies on the fact that Claimant worked the entire week following the injury without complaint and furthermore, as witnesses testified to, he performed a number of strenuous tasks during that week.

The Board notes that situations such as that involved herein have occurred on many occasions in the past. As the Third Division stated in its Award No. 19298:

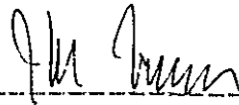
"It is of the greatest importance for the employer to know of any injury, whether real, suspected, or imaginary, that has happened to any of its employees while on duty. An employee may not invoke his own judgement of what constitutes a reportable injury. He must report all of them, according to the rules, whether real, suspected or imaginary. The Claimant was dilatory in reporting an injury."

There have been many other Awards, including several on this property, dealing with the same subject. It is obvious that from The Carrier's standpoint, as has been supported by many tribunals such as this, it is vital that an employee obey the rules and report an injury prior to the end of the shift or tour of duty on which the alleged injury took place. In this instance, not only was there an 11 day hiatus, but other employees testified that


they were not aware of any injury suffered by Claimant on the day in question, nor was there any apparent impairment in his activities during the week following the injury. As the Board views it, Carrier has sustained its burden of proof in establishing that Claimant falsified a report and the charges were properly sustained. The Claim must be denied.

AWARD

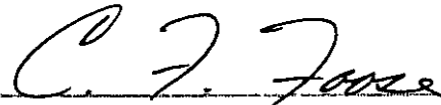
Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon,
Carrier Member



C. F. Foosé,
Employee Member

Chicago, Illinois
March 31, 1988