

PUBLIC LAW BOARD NO. 2774

Award No. 195
Case No. 195

PARTIES
TO
DISPUTE:

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

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Welder Helper Pete Gonzalez III. Said action being excessive, unduly harsh and in abuse of discretion.

"That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

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.

Claimant, a Welder Helper, had been employed by Carrier in 1981. Pursuant to an investigation held on May 26, 1988, Claimant was found guilty of furnishing conflicting and false statements and information to Carrier regarding an alleged on-duty injury. Based on that finding, he was dismissed from Carrier's service.

The record indicates that on March 17, 1988, Claimant complained to his Foreman that he was experiencing pain in his lower back and/or groin. This information was relayed to the Roadmaster, who discussed the matter on the phone with Claimant on the same date. When questioned as to whether or not the pain was job-related, he responded in the negative. However, subsequently in the conversation with the Roadmaster, Claimant decided that he had first experienced the pain on Tuesday evening, March 15, after work, and was confident that it had to have happened that day on duty, whatever the problem was. However, he finally decided not to claim it was a work-related injury, and the two

decided that he should go to the doctor and see what the problem was. After visiting the doctor, Claimant called the Roadmaster on March 17, and informed him that the doctor's diagnosis was an infection in his testicles, and he would be unable to return to work until March 22. There is some confusing testimony by a fellow employee with respect to the nature of the problem which Claimant had suffered, and that information had been conveyed to the Foreman. The diagnosis which the Foreman understood was involved concerned either a hernia or venereal disease. In the course of this entire matter, Claimant moved from his original home in Stockton to Barstow, California, and was still experiencing considerable pain. After the move he was directed to the community hospital in San Bernardino, and was seen by a referred doctor, who diagnosed his problem as a severe case of epididymis. That doctor, in a letter which was read into the record of the investigation, also indicated "There is no doubt in my mind that this was a work-related condition." Thereafter, Claimant felt obligated to file an on-duty injury report in order to comply with Carrier's rules as he understood them.

Carrier's position was that Claimant did not receive an injury on the job, and therefore his accident report was fraudulent, since he alleged the injury in order to secure time off with pay. Petitioner, on the other hand, urges that Claimant acted carefully in accordance with Carrier's rules, and when the doctor indicated that it had to have come from a work-related problem, the injury was indeed job-related, as he saw it. Therefore he filed the report late, but when he was made aware by the physician of the implications of the problem.

After a careful review of the record, the Board is of the opinion that there was no evidence that Claimant acted fraudulently in order to secure time off with pay, as alleged by Carrier. The record indicates considerable confusion with respect to the injury, but the type of confusion which may not be abnormal under all the circumstances, given the nature of the injury and the various physicians involved. It is apparent that there was considerable misunderstanding involved on the part of both

Carrier officials as well as some culpability on the part of Claimant. He clearly did not deal with the problem in timely fashion, nor did he file the accident report in timely fashion. However, that still does not warrant the type of discipline which in this instance Carrier concluded was appropriate. For the reasons indicated, therefore, the Board concludes that Claimant shall be reinstated to his former position with all rights unimpaired, but shall not receive pay for time lost by virtue of his culpability in part, at least, for the problem. In short, a misunderstanding does not indicate fraud.

AWARD

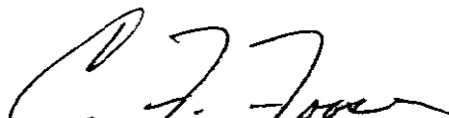
Claim sustained in part; Claimant shall be returned to his former position, with all rights unimpaired, but without pay for time lost.

ORDER

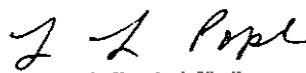
Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



Carrier Member

Chicago, Illinois
September 29, 1989