

PUBLIC LAW BOARD NO. 2774

Award No. 196
Case No. 196

PARTIES
TO
DISPUTE:

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

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Trackman/Truck Driver A. H. Miller. 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 herein had been working for Carrier for 33 years at the time of the incident involved in this dispute. He had held no other job since he was 19 years old. At the time of the incident he was employed as a Trackman/Truck Driver on Carrier's Arizona Division.

Claimant was charged with fraudulently claiming an on-duty injury, which he alleged occurred some two or three months earlier than his report, which was dated June 17, 1988. As a result of the investigation of the charge, held on July 18, 1988, he was found guilty of the charges and removed from Carrier's service.

Carrier insists that Claimant was properly charged with the violation of an important rule, and the evidence indicates his guilt without question. He did indeed file an injury report in mid-June which related to an injury which he later claimed occurred first in March or April, and then subsequently in

May of 1988. From Carrier's point of view, the rule is an important one and it was violated on a fraudulent basis by Claimant. Petitioner, on the other hand, insists that Claimant did not understand the rules at all, since he is a descendant of the Acoma Indian Tribe, and has a limited ability to speak and understand English. Petitioner, while admitting that Claimant filed his accident report late, insists that Claimant was confused and defeated by Carrier's administrative processes, and did not abide by them for that reason. He clearly was injured on the job, according to the Petitioner, and his tardiness was understandable in view of his inability to fully understand the implications of the rules.

The testimony at the investigation of this matter is quite revealing. It is apparent that Claimant was fearful of reporting an injury when it first occurred in the spring of 1988, and deliberately lied to his Foreman. All parties involved in the matter representing Carrier acknowledge that he had sustained some knee problems. He finally injured the knee again, apparently on May 23, and had to go to a physician. Subsequently, an accident report was filed several weeks later. As the Board views it there is no doubt but that Claimant violated Carrier's rules by not reporting the accident in timely fashion. Further, his rationale for not doing so, that is, his fear of spoiling the Carrier's safety record, while admirable, was inappropriate. However, Carrier's decision to terminate Claimant, with 33 years of service, for actions which he deemed were correct ones to protect the Carrier, seems incongruous and harsh. It is this Board's view that in order to rectify what apparently was a gross miscarriage of penalty on the part of Carrier, Claimant shall be returned to service, with all rights unimpaired, and his penalty for failing to abide by the rules shall be a loss of pay during the interim period.

AWARD

Claim sustained in part; Claimant shall be returned to service, with all rights unimpaired, but will not be made whole for losses sustained.

ORDER

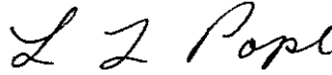
Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



L. Z. Pope, Carrier Member

Chicago, Illinois
September 29, 1989