

Award No. 21
Case No. 29

STATEMENT OF CLAIM

"1. That the dismissal of Plains Division Trackman D.B. Morse was unjust.

2. That Claimant Morse be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for wage loss and/or otherwise made whole."

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.

"Concerning your allegation that you were injured while on duty as a Trackman on March 15, 1980 near View, Texas, and certain discrepancies in this allegation which indicated that your injury may not have occurred as reported by you, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 14 and 16...."

The record indicates that Claimant was granted a leave of absence on March 15, 1980 due to his alleged back injury. The record indicates further that on June 9, 1980, Claimant went to the Roadmaster's office to obtain an extension of his original leave of absence. In the course of obtaining the extension, the Clerk in the office handed Claimant a notice to attend a formal investigation (supra). The uncontradicted statement of Claimant was that he advised the Clerk that he could not attend that investigation

on June 18 because he was going to the hospital for back surgery on June 17, 1980. There is some confusion as to the response made by the Clerk but the facts indicated above are not refuted. It is also clear that the investigation was held without Claimant being present due to his being in the hospital for the surgery indicated.

The principle thrust of Petitioner's position in this dispute is that Claimant was not given an opportunity to make a case or defend himself with respect to the charges since the investigation was held without his being present due to his hospitalization. Carrier, on the other hand, indicates that even though Claimant was handed and acknowledged the receipt of the notice of investigation on June 9 did not request that the investigation be postponed nor did he attend it.

Although it is clear that investigations may be held quite properly in the absence of a Claimant without impairing Carrier's right to draw a conclusion from the facts adduced, it is also clear that in those situations in which a Claimant cannot appear Carrier should take notice of the reasons for that fact. In this case, there is some confusion as to the handling of the notice of investigation and the request for postponement. It is obvious that Claimant did not indeed make a written request for a postponement of the investigation. It is equally clear, without rebuttal, that he did inform the Clerk who handed him the notice of investigation that he could not be present. It seems to this Board that the Carrier made an error in judgment in proceeding with the investigation under those circumstances. Thus, it is apparent that there were two mistakes made, one by the Carrier and one by the Claimant in the processing of this entire grievance. In this Board's view in the light of the circumstances indicated above Claimant should be reinstated to his former position subject to passing a physical examination but without compensation for time lost. Carrier should not be penalized for Claimant's mistakes nor should Claimant lose his position in view of the lack of due process which he might be in part responsible for but not wholly. The Board cannot come to the merits of this case and makes no finding with respect to whether or not the injury report was falsely or improperly filed.

AWARD

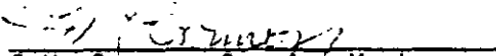
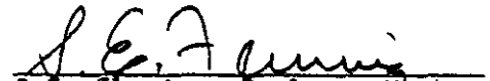
Claim sustained in part; Claimant will be reinstated to his former position conditioned upon passing a return to work physical examination but will not be compensated for time lost.

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
S.E. Fleming, Employee Member

January , 1982
Chicago, IL