

PUBLIC LAW BOARD NO. 3241

In the Matter of:) National Mediation Board
) Administrator
BROTHERHOOD OF MAINTENANCE OF)
WAY EMPLOYES,)
)
Organization,)
and)
)
UNION PACIFIC RAILROAD) Case No. 57
COMPANY,) Award No. 57
)
Carrier.)
_____)

Hearing Date: May 7, 1996
Hearing Location: Sacramento, California
Date of Award: July 22, 1996

MEMBERS OF THE BOARD

Employes' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Track Laborer Mr. A. E. Shirley. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss suffered and his record cleared of all charges.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

Pursuant to proper written notice dated July 26, 1993, the Carrier charged Claimant with being absent without proper authority from July 12, 1993 through July 26, 1993 and for allegedly falsifying an accident report that Claimant completed on July 22, 1993. The following facts were adduced at the August 13, 1993 investigation.

After the Independence Day holiday, Claimant, a Laborer on Gang 7307, did not report to work. According to the Gang Foreman, Claimant represented to him that he [Claimant] had injured his back while off duty. Claimant declared that his back was being treated by a chiropractor. As a result, the Foreman gave Claimant permission to be absent for a couple of days to recuperate.

While the record is unclear, the chiropractor apparently cleared Claimant to perform light duty as of July 16, 1993. Nevertheless, Claimant failed to either report to work or obtain a medical leave of absence. Even when Claimant met with the Manager of Track Programs on July 22, 1993, he did not request a leave of absence.

The Carrier contends that it did not learn that Claimant was alleging that he had suffered an on duty injury until July 22. At that time Claimant told the Manager of Track Programs that he injured his back on June 14 while operating a spike puller. Claimant completed an accident form attesting that he twisted his back (at the waist) while running a spike puller on June 14. The Manager of Track Programs inquired of the Foreman of the gang whether Claimant had reported the injury. The Foreman testified that, on July 7, 1993, Claimant told him that he had

suffered an off duty injury to his back but the Foreman specifically denied that Claimant ever told him that he had incurred a job related injury.¹ A member of Gang 7307 testified that sometime in late June, Claimant mentioned to him that he had injured himself while performing in a rodeo. Two Trackmen and the Foreman were certain that nobody on the gang operated a spike puller on June 14.

On June 25, 1993, the members of the gang awarded Claimant a "Peer of the Month" letter because Claimant had the best safety record during the preceding month. When presented with the award, Claimant did not mention the back injury, which he purportedly incurred on June 14. Any on duty injury would have disqualified him from receiving the award.

Following the investigation, the Carrier dismissed Claimant from service.

The Carrier submitted substantial evidence showing that Claimant committed both charged offenses. The record does not contain any evidence that Claimant ever requested or received a leave of absence to cover the lengthy period he was off work. At most, the Gang Foreman permitted Claimant to be absent a couple of days following the Independence Day holiday weekend to rest his injured back. Claimant lacked permission to be off from July 12, 1993 through July 26, 1993.

The record also contains substantial evidence that Claimant misrepresented, if not falsified, the personal injury report. Although Claimant adamantly asserted that he suffered an on duty injury on June 14 and that he promptly reported the injury to the Foreman on the same day, the record contains reliable evidence casting doubt on the veracity of Claimant's story. By his own admission, Claimant did not seek treatment for the alleged on duty injury until after July 4, 1993, which was more than three weeks after he purportedly twisted his back. If Claimant had actually

¹ Claimant testified that, immediately after he injured his back while on duty on June 14, he reported the injury to the Gang Foreman and the latter allegedly told Claimant to quit complaining.

injured his back on June 14, it is implausible that he would have delayed seeking treatment for three weeks. It is also unlikely that Claimant reported the injury on June 14 because it would have rendered him ineligible for the safety commendation. Also, it is more than coincidental that Claimant began claiming that he suffered an on duty back injury shortly after he remarked to a co-worker that he injured himself while participating in a rodeo. Finally and most important, the fact that no employee used a spike puller on June 14 is strong circumstantial evidence that Claimant was attempting to convert an off duty injury into an on duty injury.

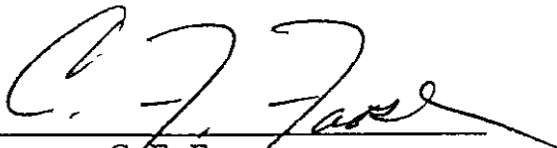
As an appellate tribunal, this Board may not resolve conflicts in testimony or evaluate the credibility of witnesses. Suffice it to state, the number of inconsistencies in Claimant's story gave the Hearing Officer good reasons to credit the testimony of the Foreman and the gang members over Claimant's self-serving denials.

Falsifying a personal injury report constitutes dishonesty. Therefore, this Board upholds the assessed penalty.

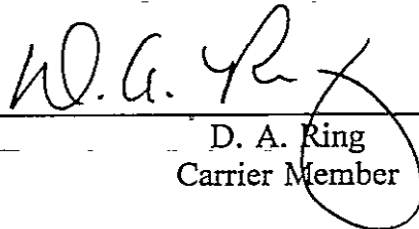
AWARD AND ORDER

Claim denied.

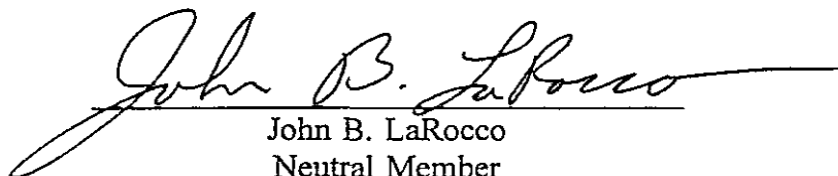
Dated: July 22, 1996



C. F. Foose
Employees' Member



D. A. Ring
Carrier Member



John B. LaRocco
Neutral Member