

PUBLIC LAW BOARD NO. 3445

AWARD NO.: 34

CASE NO.: 34

PARTIES TO DISPUTE

Brotherhood of Maintenance Of Way
Employees
and
Southern Railway Company

STATEMENT OF CLAIM

B & B Helper, D. W. Rowland, P. O. Box 182, Appalachia, VA 24216 was dismissed from service on December 28, 1984 for alleged falsifying and submitting a report that a personal injury occurred on October 5, 1984. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay for all lost time and all other rights unimpaired.

FINDINGS

Claimant, at the time of the dispute in question, was employed as a B and B Helper at Andover, Virginia. By letter dated November 7, 1984, Claimant was notified to attend an investigation concerning charges that he falsified a personal injury report. An investigation was held on December 12, 1984. By letter dated December 28, 1984, Claimant was dismissed from service on the basis of his adjudged guilt concerning the

aforementioned charges.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Carrier failed to sustain the charge brought against Claimant, and that the discipline imposed was without cause.

Initially, the Organization contends that the discipline should be invalidated on procedural grounds. The Organization maintains that Carrier impermissibly prejudiced Claimant's due process rights by allowing someone other than the hearing officer present at the investigation to render a decision regarding discipline. Specifically, the Organization contends that Carrier allowed an officer who was not even present at the investigation to render a final decision on discipline, even though that officer had no opportunity to hear the evidence presented or observe the demeanor of the witnesses. The Organization maintains that such an action on the part of Carrier violated Claimant's rights under Rule 40 (D) of the Agreement, and thereby rendered the discipline imposed invalid.

The position of the Carrier is that Claimant was properly dismissed for falsifying a personal injury report.

Carrier contends that Claimant was afforded a fair hearing as requested by the Agreement. Carrier maintains that the fact that the officer making the final decision was not the same as the officer conducting the hearing in no way prejudiced Claimant's right to a fair hearing. Carrier argues that Rule 40, covering discipline, nowhere states that the hearing officer must be the individual to determine discipline, and further argues that it has been a long-standing practice to allow an individual other than the hearing officer to determine discipline. Finally, Carrier maintains that Mr. Tallent, the decision-making officer, fully reviewed the record and conferred with the hearing officer, and that his decisions was therefore proper.

Regarding the substantive charge, Carrier argues that Claimant was clearly guilty of falsifying an injury report. Carrier contends that several factors indicate that Claimant lied about an injury allegedly suffered while on duty on October 5, 1984. Initially, Carrier cites the fact that Claimant did not report the injury until two weeks after it allegedly happened, and only after Claimant was told he had a muscle strain by a physician. Carrier argues that Claimant's explanation regarding the injury lacks credibility, both because it was not originally reported and because his account of the accident is directly contradicted by an employee working in the same area. Carrier cites the testimony of B and B Helper T. W. Vandergriff that Claimant did

not appear to be injured in the manner he later claimed to be, and that, to his knowledge, the alleged cause of the injury never occurred. Carrier maintains that the testimony of Mr. Vandergriff, when looked at in conjunction with the other evidence, clearly established that Claimant purposely falsified an injury report.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Initially, we reject the Organization's contention that Claimant was denied a fair investigation. We find no evidence of prejudice on the basis of the decision being rendered by an official other than that who conducted the hearing. It is undoubtedly true that the decision-making officer should have first-hand knowledge of the evidence presented and the demeanor of the witnesses in order to render an informed decision. However, as long as that information is supplied to the official, we find no need, nor does Rule 40 require, that that decision-making official actually be present at the hearing. In sum, we find that Tallent had an adequate evidentiary basis upon which to

render a decision, and that Claimant's rights were therefore not prejudiced by the conduct of the investigation.

Concerning the substantive charge, we find that Carrier has sustained the charge against Claimant through substantial evidence. The record indicates that Claimant, prior to the incident in question, had suffered several episodes of chest pain. The record further indicates that Claimant suffered similar discomfort on the date in question, and failed to report any injury to Carrier on that date. Evidence produced at the investigation established that upon later learning that he had suffered a muscle strain, Claimant subsequently reported to Carrier that he was injured on the date in question, while lifting a board. The evidence strongly suggests that Claimant formulated an intent to report the "injury" only after he was told about the cause of his discomfort. The testimony of Vandergriff further suggests that Claimant's alleged injury either did not occur at all or was not precipitated in the manner alleged by Claimant. Overall, we find that sufficient evidence exists in the record to sustain the charge brought, and that Carrier acted within its discretion in dismissing Claimant for his dishonest actions.

AWARD

Claim Denied.

Nicholas Pinos
Neutral Member

J. M. Jones
Carrier Member

Gregory L. Hall
Organization Member

Date: Oct. 1, 1987