

PUBLIC LAW BOARD NO. 3530

Award No.: 93

Case No.: 93

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Section Laborer, Donald W. Rawling, P. O. Box 107, Montvale, Va. 24122, was assessed a 30 day actual suspension for alleged dishonesty by making false statements about an injury he sustained on April 17, 1985. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request 30 day suspension be removed and pay for lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on August 20, 1974.

By letter dated May 3, 1985, Claimant was notified to attend a formal investigation as to his alleged making of false statements in connection with an injury he sustained. The investigation was conducted on May 15, 1985 at which time the Carrier adduced evidence that Claimant had made false statements. On May 29, 1985, Claimant was suspended for 30 days.

The issue to be resolved in this dispute is whether Claimant was

suspended for just cause under the Agreement; and if not, what should the remedy be.

On October 9, 1984, Claimant injured his knee and filed a form CT-37 (accident reporting form). He had surgery in November 1984 and returned to work in April 1985 with direction from his doctor that he work only on level ground. On April 17, 1985, while cleaning switches at Kinney Yard--the most level ground available--Claimant allegedly reinjured the same knee. Claimant reported the accident at three different times but in so doing gave three different and conflicting explanations of how the accident occurred. Based on this conflict, Claimant was charged with making false statements.

The position of the Organization is that Claimant was suspended without just cause because at all times, his explanation of the cause of his injury has been the same, thereby proving that he did not falsify his report of the accident. The Organization maintains that Claimant's knee, which had been injured and on which he had recently been operated, simply gave way. Therefore, the Organization contends, the Carrier never sustained its burden of proof.

The position of the Carrier is that Claimant was justly suspended because the evidence clearly shows that he made false statements as to the cause of his injury. The Carrier cites the three conflicting explanations given by Claimant as to the cause of the accident as proof that he falsified his explanation of the cause. Central to the Carrier's position is that Claimant's third explanation ("knee gave way") followed his being told by a

Carrier officer that his second explanation ("stepped half on and half off a tie") was a violation of the Carrier's safety rules. This alone, the Carrier implies, shows fabrication. Finally, the Carrier contends that the punishment of suspension is reasonable, indeed generous, under the circumstances because the making of false statements is a dismissible offense.

After review of the entire record, the Board finds that Claimant was suspended for just cause under the Agreement.

The Carrier has established by substantive credible evidence in the record that Claimant made a false statement regarding the injury he sustained. It is not necessary to show which of the statements was false or that Claimant was not injured; that is not the issue. The question is whether Claimant made a false statement. With three conflicting and irreconcilable explanations of the accident, the only conclusion that the examiner could have made was that at least one of them was false. It is significant that the explanation that the knee gave way was the third explanation offered by Claimant as the basis for the injury. After being told that his second explanation was a violation of the safety rules, the circumstances suggest strong motivation for fabricating an alternative explanation.

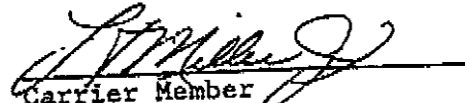
Truthfulness in the employment relationship is essential. It is perhaps most significant in the area of accident and injury reporting because provision of a safe work environment is one of the primary obligations of an employer. Claimant's violation of that principle is a serious

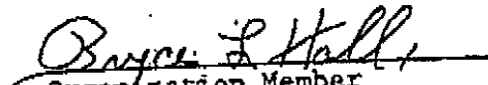
offense and the discipline of suspension is not arbitrary, capricious or discriminatory.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: Dec 13, 1989