

SPECIAL BOARD OF ADJUSTMENT  
PUBLIC LAW BOARD NO. 3729

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CONSOLIDATED RAIL CORPORATION  
"CARRIER"

-and-

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES  
"ORGANIZATION"

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CASE NO. 2

AWARD NO. 9

STATEMENT OF CLAIM:

Claim of the Brotherhood (CR-253-D) that:

(a) The discipline assessed Claimant, Patrick Durkin, Welder, was without just and sufficient cause, based on unsubstantiated charges and without due consideration of the facts.

(b) The Claimant, Patrick Durkin, shall be exonerated of the charges and shall be allowed the remedy of Rule 27, Section 4, of the Scheduled Agreement, including his benefits.

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This case arose when the Carrier charged P. Durkin, hereinafter the Claimant with allegedly falsifying a personal injury report. The specific charges, contained in a Notice dated June 10, 1982, were as follows:

Alleged falsification of job related personal injury in that on Wednesday, June 2, 1982, at approximately 7:00 A.M. you reported a back injury to your supervisor which you claim was job related.

The hearing was held on June 23, 1982. The Claimant was present and represented by the Organization. By notice dated July 2, 1982, the Carrier notified the Claimant that he had been found guilty as charged and was dismissed. The above quoted claim was then filed on behalf of the Claimant and the Carrier subsequently reduced the dismissal to a 60 day suspension, based on leniency. The Organization continued to process the claim.

On May 20, 1982, the date of the alleged injury, the Claimant had eight years seniority and was a welder on the New Jersey Division at Elizabethport, New Jersey. The Claimant did not report any injury on that date. On May 24, 25 and 26 the Claimant had discussions with Carrier representatives concerning his back hurting. According to the Carrier witnesses, the Claimant specifically stated on these occasions that his back injury was not work related. From May 24 until June 2 the Claimant was absent because of the injury. Upon returning to work on June 2, the Claimant for the first time contended that he had hurt his back while putting ties in on May 20.

POSITION OF THE PARTIES:

The Organization maintains that the discipline of the Claimant was arbitrary and not supported by record evidence. The Claimant suffered a real injury that even the Carrier's own doctor concluded was work related.

The Carrier argues that the record supports a finding of the Claimant's guilt, as the Claimant did not report an injury on May 20 and on several occasions prior to June 2 told persons the back injury was not job related. In addition, the Board lacks

authority to sustain the claim, as the Claimant accepted a reduction in discipline from discharge to suspension based on leniency.

OPINION OF THE BOARD:

The Board has concluded that the record does not contain substantial evidence that the Claimant falsely reported an injury. The Claimant did have a back injury and spent time in the hospital. Although the Claimant did not report the injury on May 20 and initially believed that the injury was not work related, it did not evidence dishonesty when he later concluded the injury was work related after a chiropractor diagnosed the injury as resulting from lifting something heavy.

The Claimant's contention that the injury occurred on May 20 is not incredible, as back injuries may start small and get progressively worse. Furthermore, the Claimant has no history of dishonesty and the Carrier's own physician also concluded the injury was work related. Accordingly, the claim shall be sustained.

The Board has also concluded that it has jurisdiction over this claim. Neither the Claimant nor Organization ever acknowledged that it was accepting a reduction in discipline based on leniency or agreed to withdraw the claim. Accordingly, the claim shall be sustained.

AWARD:

The claim is sustained. The remedy shall be in accordance with Rule 27, Section 4 of the applicable Schedule Agreement. Monies owed, if any, shall be paid within 30 days.

SCOTT E. BUCHHEIT 11-21-85  
 SCOTT E. BUCHHEIT  
 Neutral Member

Robert O'Neill 12/2/85  
 ROBERT O'NEILL  
 Carrier Member I dissent

This Board member does not agree with the majority conclusion that the record does not contain substantial evidence that the claimant falsely reported an injury or the claimant did have a back injury.

It is a matter of record that the claimant, himself, stated on several occasions that he had back pains but no injury was involved. While the Carrier physician concluded the injury was work related, the Board majority failed to take into consideration the following statement in the same report - "He (the chiropractor) could pop it back into place so it must be related to the accident 4 or 5 years ago." In the final record the claimant admitted he sustained a job related injury on his former U.S. Postal or fire years ago.

James P. Casese 11/26/85  
 J. P. CASSESE  
 Organization Member