

Case No. 78

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of Tie Gang Laborer S.L. Stokes for alleged 'violation of Rules 585, 589 and 574 of the Burlington Northern Safety Rules and General Rules...' was without just and sufficient cause, arbitrary, capricious and based on unproven charges.

2. The Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: This dispute concerns the dismissal of Claimant, Tie Gang Laborer S.L. Stokes, on the following charge:

Violation of Rules 585, 589 and 574 of the Burlington Northern Safety Rules and General Rules "Form 15001"(8181), for your failure to make report of alleged personal injury sustained by you on September 5, 1986 and for your falsification of reports received in this office September 23, 1986 while you were assigned as laborer on Region Tie Gang No. 3, near Brush, Colorado.

An investigation was held on October 6, 1986, in absentia. Neither the Claimant nor his representative appeared at the hearing, nor did either request a postponement. As a result of the investigation, Claimant was dismissed on October 31, 1986.

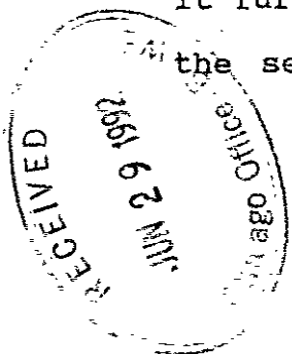
The Organization appealed Carrier's dismissal of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

Carrier contends that Claimant did not submit the Personal Injury Report until September 23, 1986, 18 days after the alleged

injury. It maintains that there exists no evidence to prove that Claimant submitted a report on September 8, 1986. Carrier argues that the testimony of four (4) witnesses who were in contact with Claimant, two on the day of the alleged injury and the others, a few days later, stated that he did not refer to any type of injury. Additionally, it contends that the report was completed by someone other than Claimant, and the later report lists information different than the initial report. Carrier concludes that dismissal is the appropriate penalty considering the seriousness of the charges. It asks that the claim be denied.

The Organization, on the other hand, contends that Carrier has failed to present substantial evidence that would support the charge. It states that although Claimant felt pain in his back on September 5, 1986, he assumed the pain to be caused from fatigue after a week's work. For that reason, it asserts that Claimant did not file a personal injury report. The Organization argues that it was not until Monday, September 8, 1986 that he realized the pain had worsened and he was unable to work. As a result, it states that Claimant was treated as an outpatient at a hospital where it was determined that he would be absent from work for three weeks.

The Organization argues that Claimant filed a Personal Injury Report on September 8, 1986 which was misplaced by Carrier offices; he then xeroxed a copy and hand delivered it on September 23, 1986. It further contends that there is no proof to the allegation that the second report was falsified. In the Organization's view,



Claimant complied with Carrier Safety Rules when he completed the report as soon as he sought medical attention. Accordingly, it asks that the claim be sustained in its entirety.

The record in this instant case supports the Carrier. Neither the Claimant nor the Organization has offered any substantial proof to convince this Board that a report was filed on September 8, 1986. Not only did Claimant not file a timely report, but he attempted to falsify the report. The seriousness of such charges can not be minimized. The rules regarding the reporting of accidents and injuries allows Carrier to promptly respond to the cause of the accident in addition to prompt medical attention for the employee.

There is no evidence of record, other than the claim filed by the employee, that he actually injured himself on September 5, 1986. Testimony of Carrier witnesses is clear and convincing that Claimant did not appear to have injured himself nor did he refer to any type of injury to his supervisors. We conclude that there was substantial evidence to support Carrier's decision to dismiss Claimant.

Accordingly, and for the foregoing reasons, the claim is denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

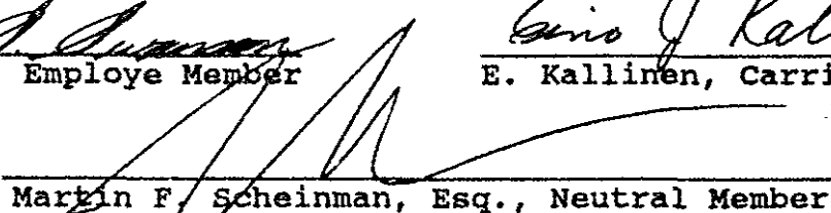
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Esq., Neutral Member

6/18/92