
—

representative ("Organization") within the meaning of the Railway Labor Act ("Act"), as amended.

FINDINGS

On December 5, 1994, the claimant, Kedda J. Paul, was charged with filing a Form 1421 Standard, Report of Injured Persons, in violation of Rules A, B, 1007 and 1024, effective June 30, 1993, and Safety and General Rules 1.1, 1.3, 1.6 and 50.4, effective September 30, 1994. A formal investigation was conducted on December 15, 1994, without the claimant in attendance. Subsequent to the investigation, the claimant was discharged on January 3, 1995, for violation of the above-cited rules.

The medical evidence in the record consists of a note from the claimant's treating physician which states the claimant was seen on November 14, 1994, and that he was to be released from work for the period November 14 through November 18, 1994. (Carrier Exhibit D). On November 21, 1994, the claimant's treating physician also suggested that the claimant undergo an MRI examination, and wrote that claimant may not return to work until instructed to do so. (Carrier Exhibit E). The physician estimated this time off work would last approximately one month.

On November 28, 1994, one of Carrier's superintendents wrote to the claimant asking for particulars with respect to the alleged back injury, including whether it was on-duty or off-duty in nature because "... we have no information concerning your sustaining

any type of back injury." (Carrier Exhibit F). The claimant proceeded to file a Form 1421 on December 3, 1994. The Form 1421, signed by the claimant and dated December 2, 1994, states that the claimant suffered an injury which resulted in severe pain to his back, hip and left leg as the result of an accident which occurred on August 23, 1994. The form further states the cause of the claimant's injury in his own words, as follows: "I was changing a traction motor on the tamper, slipped and twisted my back when I lifted it." (Carrier Exhibit C). The Form 1421 also indicated that the claimant informed a roadmaster and track supervisor of his injuries on August 24, 1994. This version of events was repeated with greater detail by claimant's counsel in correspondence to the Carrier dated December 5, 1994.

The claimant and his attorney's statement that the Carrier was verbally informed of the on-the-job injury on August 24, 1994, was contradicted by the testimony of the track supervisor and the roadmaster. The supervisor testified that the first he learned of the incident was on December 5 when he received notice via a phone call that claimant asserted he had suffered an injury in August 1994, and had informed the supervisor at the time. The supervisor also denied any recollection of claimant informing the roadmaster of a personal injury.

The roadmaster testified that the claimant was a machine operator working under his jurisdiction at the time of the alleged injury, but denied that the claimant verbally informed him on August 24 of any injury the day before. The Carrier submitted evidence

that the roadmaster was in attendance at a seminar in Phoenix, Arizona on August 24 after leaving Kingman on August 22 at 8:00 a.m. The roadmaster further indicated that it would have been impossible for the claimant to have suffered an injury in the manner claimed in that there are no traction motors on the tamping machine used by claimant.

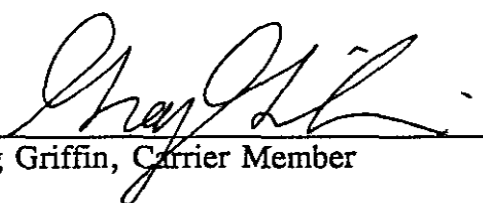
The Board notes that while there does appear to be some evidence that the claimant may have attempted to indicate his inability to attend the formal investigation, there is no showing as to whether a request for postponement was made by the claimant in a timely fashion. Indeed, it was the Carrier which placed into the record a facsimile transmission received one hour after the hearing commenced which would indicate the claimant was unable to attend the investigation. The claimant's representative was present having received notice of the investigation, but had no information as to the claimant's whereabouts or the reason for his absence from the formal investigation. Without even a minimal showing of good cause for the claimant's absence and a timely postponement request, the Board cannot conclude that a due process violation occurred in proceeding with the investigation with a duly appointed representative present but without the claimant in attendance.

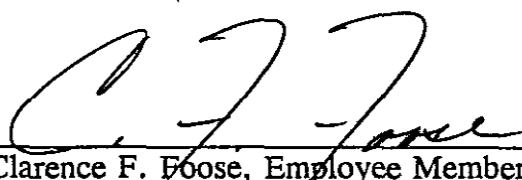
The Board further finds the claimant failed to timely file an injury report and verbally inform his immediate supervisor of his injury in violation of Rule 1024, or Rule 50.4 effective September 30, 1994. Even if the Form 1421 is viewed most favorably to the claimant, and the assumption is made that he suffered an on-duty injury of some kind on August 23, 1994, and verbally reported same the next day, it is self-evident that claimant's

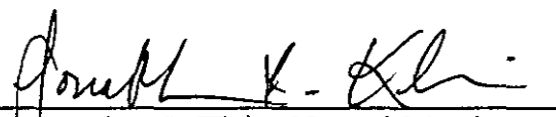
completion of an injury report over three months later is a clear violation of the injury reporting rule. While there is evidence the claimant was absent for a period of time before or subsequent to the alleged on-duty accident, the precise reason for his absence is unclear.¹ The Board further finds the evidence insufficient to prove the claimant violated Rule 1007 with respect to carelessness, negligence or insubordination. The Board, after consideration of the evidence and claimant's past record, finds that he should be reinstated to employment with the Carrier with his seniority rights unimpaired, but without back pay.

AWARD

The claim is sustained, in part, as follows. The claimant shall be reinstated to his employment relationship with the Carrier with his seniority rights unimpaired within thirty (30) days of the date of this award, but without back pay.


Greg Griffin, Carrier Member


Clarence F. Foose, Employee Member


Jonathan I. Klein, Neutral Member

Award issued the 13 day of January, 1996.⁷

1. The Board notes that according to claimant's counsel he "took two weeks off, August 17 to August 31, because he was in pain due to this injury . . ." The injury occurred on August 23 according to claimant's own Form 1421. (Compare, Carrier Exhibit C and G); (Testimony of Marino).