

Award No. 3
Case No. 3

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Kansas City Division Trackman Trini Ybarra, Jr. from service effective March 18, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Ybarra to service with his seniority rights unimpaired and compensate him for all wages lost from March 18, 1986.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute, Kansas City Division Trackman Trini Ybarra, Jr. (the "Claimant") was notified to attend a formal investigation in Emporia, Kansas, on February 25, 1986, concerning a report that he had allegedly falsified reports regarding an alleged personal injury (a broken right ankle) on January 31, 1986, and that he aggravated this injury while at home recuperating on February 7, 1986. Pursuant to the investigation the Claimant was found to have violated Rules 1, 2, 5, 14, 16, 30 and 31-B of the Carrier's General Rules for the Guidance of Employees, Form 2626 Std., 1978, and was dismissed from the service of the Carrier.

At the commencement of the formal investigation the Claimant testified that the alleged injury occurred on the Carrier's property on January 31, 1986. He stated that he sustained the injury when he slipped on a tie and twisted his ankle. In response to questioning by his representative, P.C. Wolfersberger, the Claimant further testified that he noticed his injury when he arrived at his home in Ottawa, Kansas that evening. The Claimant stated that he soaked his ankle and then sometime between 9:30 p.m. and 10:30 p.m. he

sought medical attention. When further questioned by the Carrier, the Claimant amended his testimony and stated that he went to a tavern between 9:30 p.m. and 10:30 p.m. before he sought medical attention. When asked to explain what if anything occurred at the tavern the Claimant responded that he was involved in a "push and shove deal."

Foreman E.M. Rice, the Claimant's immediate supervisor, testified that the Claimant called and informed him on February 1, 1986 that he had x-rays taken about 10:30 p.m. on January 31, 1986 and that the x-rays showed that he had broken his ankle when he slipped at work. In response to Mr. Wolfersberger's questioning, Rice testified that he saw the Claimant "recover" from a slip or stumble around 2:30 p.m. on January 31, 1986 but that the Claimant had assured him that nothing was wrong.

Roadmaster T.D. Smutzer testified that on Monday, February 3, 1986, he learned of the Claimant's injury from Foreman Rice. Roadmaster Smutzer called the Claimant at home to discuss the injury with the Claimant and the Claimant informed him that the injury occurred while at work. That afternoon Smutzer took the Claimant to see Dr. Hadley, the Claimant's personal physician. While in Hadley's office, the Claimant again declared before Dr. Hadley and Smutzer that the injury had happened at work. Smutzer further testified that on February 7, 1986 the Claimant completed the Carrier's injury report, Form 1421 Std., with Smutzer's assistance and the Claimant wrote that he suffered an on-duty injury.

Special Agent M.E. Prindle testified that on February 10, 1986, Division Engineer B.B. Laughlin asked him to investigate the circumstances surrounding the Claimant's alleged injury. From his investigation, Prindle stated that he had learned that the Claimant was involved in a fight in a bar on the evening of January 31, 1986. On February 14 and 15, 1986, Prindle obtained statements from several witnesses to the fight. He also interviewed the manager of a bar where the Claimant had performed in a band on the evening of February 7, 1986. On February 15, Prindle and Smutzer met with the Claimant. During this meeting the Claimant admitted that he had withheld information regarding the bar fight from Claim Agent Brady. The Claimant also admitted to Prindle and Smutzer that he played in a bar band on the evening of February 7, after he had told other Carrier officials that he was recuperating at home.

Prindle further testified that on February 18, 1986, he and Brady went to Ransom Memorial Hospital in Ottawa, Kansas and

obtained a copy of the hospital's emergency room outpatient report regarding the Claimant's initial treatment for his ankle injury. The report which was offered into the record as evidence showed that the Claimant was treated at 1:30 a.m. on February 1, 1986 and that he had informed the attending staff that he had sustained the injury while in a fight. Prindle stated that he and Brady then visited Dr. Hadley who confirmed that the Claimant had changed his statement regarding the injury two days after his initial treatment from an injury received in a bar fight to an injury sustained while at work.

Claim Agent P.P. Brady testified that he visited the Claimant on February 12, 1986 to complete an injury report. Brady stated that the Claimant:

... mentioned that he laid around the house and soaked his foot and around 10:00 PM, his foot was beginning to swell and approximately 1 to 2:00 AM, it got so bad that he went to Ransom Memorial Hospital. I then asked him if he stayed at home during this time from the time the injury occurred from January 31 to present time of February 12th, when I interviewed him, with the exception of going to the doctor and the hospital, and he told me yes, he did stay at home....

Following my statement, I went to the Ransom Memorial Hospital and obtained the medical reports and on one of the reports for January 31st it states that Mr. Ybarra told them at the hospital that he was involved in a fight in a bar and fell over a chair.

(See pages 33 and 34 of the Report of Board of Investigation.)

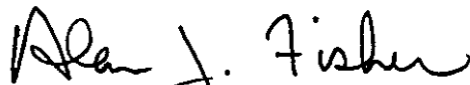
The Board has read and studied all the evidence of record. The Board finds that the Carrier conducted a thorough investigation of the circumstances surrounding the Claimant's injury and clearly substantiated the Claimant's guilt. The testimony of various Carrier officials and their submitted exhibits refuted the Claimant's testimony offered at the formal investigation as well as illustrated the Claimant's attempt to conceal information from the Carrier regarding his injury. Furthermore, the Board finds that the Claimant's spontaneous statements made to the hospital's emergency room staff concerning his injury established the truth of the matter. Greater evidential weight must be given to the hospital's emergency room record because such

records are routinely used to make decisions upon which the health and life of the patient depends. Accordingly, the Board concludes that the Claimant falsified reports regarding his alleged on-duty injury. Falsification of an on-duty injury is a serious offense. The Claimant's dismissal from the Carrier's service was appropriate.

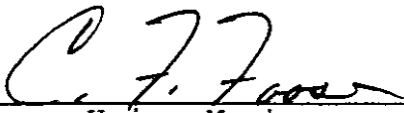
The Board also carefully reviewed the witnessed statements offered by the Organization and Carrier in support of their positions. The Board accepts these statements only to establish that the Claimant was in a bar fight on the evening of January 31, 1986 and that he played in a night club band on the evening of February 7, 1986.

The Board also finds that there is no evidence that the Carrier violated Rule 13 and Appendix 11 or any other provisions of the current collective bargaining agreement between the parties. The Claimant received a fair and impartial hearing.

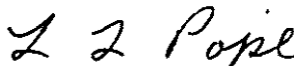
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



Union Member



Carrier Member

Dated: July 10, 1987