

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

L. The dismissal assessed to Tie Gang 9062 Laborer T.N. Tlustos for alleged violation of various company rules as indicated in Mr. B. M. Brown's letter of October 4, 1990 is arbitrary, capricious and unwarranted.

2. In light of (1) above, the claimant's record shall be cleared of the referred to discipline and he shall be returned to service and compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Cheyenne, Wyoming on September 24, 1990 to determine the facts and place responsibility in connection with an alleged report that on Monday, September 10, 1990 he reported to his foreman that he had strained his back off duty over the weekend, and then after returning from a doctor's visit on the same day, he changed his story and turned in a late report, claiming the back strain was due to an incident which occurred on August 30, 1990.

Pursuant to the investigation the claimant was found guilty of violating General Rules A, B, E, 607(4), 621 and 4404, as contained in the Union Pacific Safety, Radio and General Rules for All Employees and was dismissed from the service of the railroad.

J. T. Caldwell was the charging officer in the investigation. He testified that Foreman Bob Sanchez advised him the claimant had sustained an off duty injury over the weekend and would go to the doctor. He testified he spoke to the claimant later and asked him if he was going to the doctor, and the claimant replied "Yes."

Mr. Caldwell then testified that later in the day when the claimant returned from seeing the doctor, he was filling out his PI report with Assistant Foreman Dave Wisenhunt, and the claimant stated at that time he got hurt on August 30 on duty on Company property. Mr. Caldwell testified he asked the claimant if he was sure, and the claimant said he had got hurt moving spikes. Mr. Caldwell also stated he asked the claimant if he had told anyone about the August 30 injury, and the claimant responded that he had not.

Robert Sanchez, Assistant Tie Gang Foreman for 9062 Tie Gang, testified that the claimant reported to work on the morning of September 10, 1990 and stated he had strained his back over the weekend. He also testified the claimant did not report any on-duty injury on August 30. He also testified the claimant told him something like "This ain't gonna be a reportable injury." He further stated the claimant never told him at any time prior to September 10 that his back was hurting.

Kent Hunsaker, Operator on the Burro Crane on 9062 Gang, testified that on the morning of September 10 he heard the claimant state he had hurt his back or something over the weekend, and he wasn't claiming an on-the-job injury.

Patrick Salazar, Truck Driver on Gang 9062, testified the claimant said on the morning of September 10 that it was an off-duty injury. He also testified the claimant had told him previously his back was hurting a little bit.

The claimant testified that on Monday morning, September 10, he walked up to his Gang Foreman, Bob Sanchez, and told him his back had tweaked out on him over the weekend, causing severe enough pain to where he almost blacked out on his feet twice, and he needed to go see a doctor and possible have x-rays and get medication, and he would not take a reportable if it was not necessary. The claimant further testified that with x-rays and medication involved, it was a reportable injury.

The claimant further testified that to cover all bases and protect himself and his back in the process, he reported it as an on-the-job injury because he felt some pain off and on during the previous ten days. The claimant testified he had done nothing that weekend to hurt his back. The claimant further stated that through the weekend he laid on a heating pad and stayed off his feet as much as possible.

The claimant testified he really did not report the injury when it happened because a back pain sometimes comes and goes, and before it had gone away in a day or two. The claimant testified he was aware he was required to report on the job injuries. He stated the accident occurred on August 30, and that was when his back hurt the worst.

The claimant testified there had not been injuries on his gang before, but there had been on the surface gang, and he knew of no repercussions for reporting an injury. The claimant stated he believed the Foreman would have been very upset with him if he had reported an on-the-job injury.

Foreman Sanchez was recalled and testified he had had two injuries on his gang in the last year, and there was no formal or informal

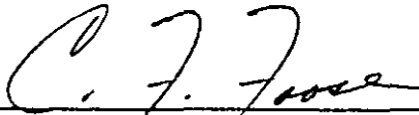
discipline or repercussions of any kind to those employees for reporting an on-the-job injury.

The Board has examined all the testimony of record and considered the evidence, as well as the exhibits submitted by the parties. The evidence establishes the Carrier was justified in reaching a decision that the claimant did not file an accident report when he was allegedly injured on August 30. The Carrier was also justified in finding that the claimant testified he had injured himself over the weekend prior to reporting to work on September 10.

Under those circumstances there is no justification to set the decision of the Carrier aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Union Member

  
Carrier Member

DATED: January 15, 1991