

PUBLIC LAW BOARD 5724

Case No. 12  
Award No. 12

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk and Western Railway Company

STATEMENT OF CLAIM:

Claim is made for and on behalf of M. S. Mikulin for dismissal to be set aside, payment of all lost time, and his service record corrected, in connection with your falsification of an alleged injury at approximately 5:30 p.m., on Thursday, April 22, 1999, at Wentzville, Missouri, General Motors chassis Track, while you were performing service as trainman/switchman on the D64D7 assignment of April 22, 1999.

OPINION OF BOARD:

On April 22, 1999, Claimant was performing service as a switchman, on Assignment D64D7, when he allegedly injured his left shoulder, while in the process of applying a hand brake on a freight car, in the area of Wentzville, Missouri. No issue was made of the injury at the time, although Claimant stated he felt a pop; however, approximately one and one-half hours later, while on lunch break, Claimant asserted he experienced pain while rolling down the window of his truck. The record discloses Claimant rejected any medical attention at the time he submitted his injury report. The Carrier advises that the car on which Claimant allegedly sustained his injury, was promptly inspected, but it was not bad-ordered, contrary to other comments in the record.

A day later, April 23, 1999, the Claimant complained of this injury, so he was escorted to Healthline Corporate Health Services, where he was examined by a physician and the report filed with the Carrier. It was the Carrier's assessment that this report failed to corroborate Claimant's assertions regarding the injury, consequently, Carrier informed Claimant to appear for a trial on a charge of falsification of an injury report. Relying on the evidence submitted at the investigation, Claimant was discharged from Carrier's service.

On appeal, the Petitioner contended that Claimant was suffering from Resistant Impingement Syndrome and was scheduled for arthroscopic surgery. On appeal, the Carrier made no change in the discipline, so the dispute was submitted to this Board, and Claimant informed of the Board's hearing date and time.

After reviewing the entire record in this case, we are not convinced that Carrier proved the charge of falsification of an injury filed against Claimant, so we will restore him to service, with seniority unimpaired, without compensation for time lost; for it appears Claimant was, and is, medically disqualified from performing service for the Carrier.

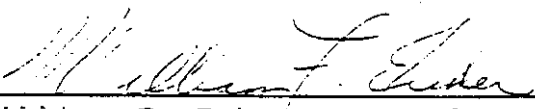
FINDINGS:

The Agreement was violated.

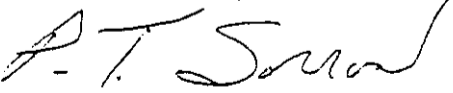
AWARD:

Claim disposed in accordance with the Opinion.

Dated at Norfolk, Virginia, this 15<sup>th</sup> day of June, 2000.

  
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William F. Euker, Neutral Member

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S. R. Budzina, Carrier Member

  
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P. T. Sorrow, Organization Member