

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF ARBITRATION BETWEEN:

THE NATIONAL RAILROAD PASSENGER)	
CORPORATION (AMTRAK))	AWARD NO. 9
)	CASE NO. 9
AND)	
)	
THE BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	

STATEMENT OF CLAIM

- (1) The dismissal of Trackman Ezequiel Alvarez for his alleged failure to properly report an injury and falsification thereof was without just and sufficient cause and based on unproven charges.
- (2) Trackman Ezequiel Alvarez shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered. He shall also have his record cleared of this incident.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated August 5, 1977; and has jurisdiction over the parties and the subject matter.

Grievant was employed by the Carrier as a Trackman, and had three years of service at the time giving rise to this claim. On November 7, 2003, he told his Foreman that he had been injured while on duty on the previous day, November 6, 2003. On November 10, 2003, when asked by the Superintendent and a Manager to provide details of his alleged injury, he stated that he had become injured on October 23, 2003 - not November 6, 2003, as he originally alleged.

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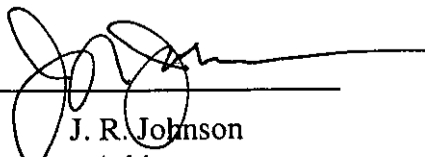
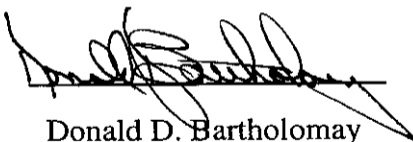
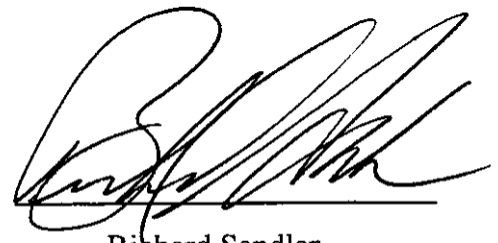
His Foreman also stated that the Grievant originally told him that he was not sure when, or how, he injured his wrist, but that it may have occurred on duty. The Foreman advised him to be careful about filing a false report of an on-duty injury, but the Grievant filed the report nonetheless.

The Union raised several arguments on the Grievant's behalf, during both the Hearing on the property and the Arbitration Hearing. However, those arguments do not overwhelm the clear testimony of the three Carrier witnesses, and the Hearing Officers determination of credibility. There is sufficient evidence that the grievant was guilty of dishonestly claiming an on-duty injury.

Although the Union urged consideration based upon the Grievant's length of service, we do not believe that three years' of service would mitigate a proven charge of dishonesty. We will deny the claim.

AWARD

The claim is denied.


J. R. Johnson
Arbitrator
Donald D. Bartholomay
Employee Member
Richard Sandler
Carrier Member

Dated: 9-22-04