

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 1

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on August 18, 1994, the Carrier dismissed Mr. M. J. Bridgeman for allegedly failing to provide factual information regarding an off-duty injury and for dishonestly reporting the off-duty injury as an on-duty injury.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On August 17, 1994, Claimant filed an injury report contending he suffered an injury on July 26, 1994, while "using a 12 lb. sledge hammer to drive hair pin and tore elbow."

An immediate preliminary investigation by his Supervisor developed some discrepancies in the injury report, and on August 18, 1994, Claimant was dismissed from service for late reporting of the injury.

At Claimant's request, an investigation was scheduled alleging dishonesty in filing a late report of an injury, and following same which was held on October 21, 1994, the Carrier reaffirmed Claimant's dismissal from service.

During the investigation, Claimant's Foreman, when questioned by Claimant's representative, testified as follows:

"117. Q. So no discussion was made on filling out Personal Injury Reports to

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Mr. Bridgeman, between you and him then, other than what we've seen here?

A. On the 25th, he'd told me his elbow was hurting. And I--and he's--and I said, 'Well, I'll call the roadmaster.' And he said, 'No,' he hurt it--he didn't hurt it on the job. That's what he told me. And so I didn't have any reason to do anything on the 25th.

118. Q. Did Mr. Bridgeman make a statement to you on the 25th that his elbow was hurting and it could possibly be connected with something he done at home?

A. Yes. He told me it--

119. Q. Or did he actually say he hurt it at home?

A. He told me he had hurt it at home loading a third member as he was preparing to move out here.

120. Q. What were you-all doing the day of the 25th?

A. We were building a switch panel at the west end of the Cherokee Yards. And he--Mr. Bridgeman was setting hairpins.

121. Q. And that evening did Mr. Bridgeman mention anything to you about talking to Mr.--Roadmaster Martin about his injury?

A. He told me his arm was hurting, he wanted to go to the doctor the next morning. And I said, 'Okay.' I asked him, I said, 'Did you hurt it here?' He said, 'No.' That's when he told me that he hurt it moving out here. And I said, 'Okay. Well--it's okay with me to go to the doctor tomorrow. Clear it with the roadmaster.'"

Claimant did request three witnesses to appear in his behalf, and even though each was advised by the Carrier that Claimant had requested them to attend, they declined to appear, advising the Roadmaster that "they could only harm him if they showed up, from what they had been told...." (See Answer to Question 79)

When Claimant testified, it developed the alleged injury occurred on July 25, 1994, yet he stated on the injury report that the injury allegedly occurred on July 26, 1994. This of and by itself is not that significant of an error, but his reporting of the injury as occurring on the job is where the dishonesty charge originated.

From the outset, he denied the injury was job related, and in fact, told his Foreman that he had suffered the injury in the process of moving his belongings from Memphis, Tennessee, to

Tulsa, Oklahoma.

He then testified that he did not want to report the injury as having occurred on the job at the outset because some Supervisor in Tennessee was advising all concerned that if you reported an injury, the discipline would be 15 calendar days or 20 if you did not waive the rights to an investigation. This argument was never established by the Claimant other than saying it was so.

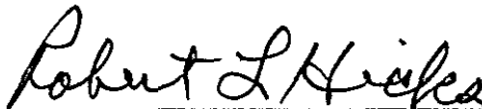
In conclusion, it is the opinion of this Board that the Carrier established by sufficient evidence that Claimant was culpable for the charges assessed. The discipline will not be disturbed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Neutral Member & Chairman
Public Law Board 6103

Dated: