

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 11

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 current Agreement when it unjustly dismissed Mr. K. L. Ballenger from service effective August 29, 1997, for alleged violation of Safety Rules and General Responsibilities for all Employees S-28.5.5 Reporting Sub A and C.
2. As a consequence of the Carrier's violation referred to above, Mr. Ballenger shall be returned to service, the discipline shall be removed from the Claimant's personal record, and he shall be compensated for all wages lost in accordance with the Agreement. (Mr. Ballenger was returned to service on December 15, 1997)

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.

Claimant sustained a serious injury (fractured fingers) on August 19, 1997, but did not file an injury report until August 28, 1997.

Claimant was dismissed for failure to promptly report an injury. An investigation was held and the late reporting of the injury was sustained with Carrier upholding the dismissal. Claimant testified he was operating a gasoline powered drill. It stalled. He asked the Foreman to pull the rope starter while he held the drill. When the drill motor started, the drill bit remained stationery, and in lieu thereof, the drill body twisted breaking Claimant's fingers.

At the time of the incident, Claimant declined medical care and finished out the day, however, he performed chores he could do only with one hand.

When Claimant was asked by the hearing officer why he did not report the injury immediately, his response was, as follows:

"Well it was, like I told the roadmaster that I just got to work and I was afraid I would get extended, I can't even talk, well anyway laid off for 30 days. Because when I worked in Birmingham Yard and Santa Fe took over that was their policy. If you got hurt or anything that they would lay you off for 30 days. And I didn't want to have to make out a report, an accident report. I thought my hand would get better. I thought I had just really bruised it read bad...."

This is not the first time that a Claimant who filed a late injury report asserted that if you got injured, you would be pulled out of service (see Case No. 1 of this Board), and since Claimant had just returned to service after a 30 day suspension for an Operating Rules violation, he believed he could not stand another thirty days which he believed would be his fate if he reported the injury immediately. With fingers fractured so severely that surgery was required for repair, Claimant surely was in pain. Perhaps he did at first want to believe that he had only bruised the fingers, but when his hand wasn't healing, he sought medical assistance who advised him of the severity of the injury.

If it is fact that suspensions are handed out simply for filing an injury report, It is readily understandable why someone would hesitate to file, and furthermore, if this is true, it does nothing but encourage incidents as we are here concerned, and it clearly undercuts Carrier's declaration as set forth in its letter of December 22, 1997, which reads:

"...It is vital that injuries be promptly and honestly reported to the Carrier for many reasons. First, if there was an unsafe work practice or work area, the Carrier needs to make a prompt inquiry into how the work was done and a thorough inspection of the location of the injury and the tools that may have been in use. Second, the employee should report the injury promptly and properly so that proper reporting can be made to the FRA. Third, if an employee's actions at the time of the injury indicate the employee was or may have been impaired, the Carrier can then move forward to properly test the employee to determine if drugs or alcohol may have been a contributing factor in the incident. When employees report injuries late, the Carrier cannot properly investigate all aspects of the injury and make a thorough assessment

of the cause, nor can they take steps to help employees avoid similar injuries in the future. Prompt reporting is a must...."

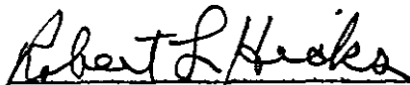
Under the circumstances, Claimant's discipline is converted to a long suspension. He is to be returned to service with full seniority rights, but without pay for time lost subject, of course, to the usual successful passing of a return to work physical or whatever is required for someone returning to work after being absent as long as Claimant has been.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



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

Dated: April 30, 1999

