

PUBLIC LAW BOARD NO 6103

Award No.
Case No. 17

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 on March 1, 1999, Mr. R. E. Ellis was dismissed from service for allegedly failing to properly notify his supervisor of an on-duty injury and failing to properly notify his supervisor of prescription medication received to treat the injury. Mr. Ellis was returned to service on June 2, 1999, reducing the dismissal to a suspension.

2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. Ellis shall be reinstated with seniority, vacation, all other rights unimpaired, 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.

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.

The Carrier has a form covering band-aid or non-reportable injuries intended to cover sprains, strains, bumps and bruises that cause an employee some minor hurt, but not severe enough to prevent the employee from working.

That form, called a "Memphis Division Non-Reportable Injury Status Change" contains the following:

"After submitting a first-aid notification it is responsibility of the employee to immediately notify their supervisor:

1. Prior to visit a physician or subsequent treatment or observation.
2. You experience complications arising from the incident/injury.

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3. Your inability to perform your normal duties as a result of the incident/injury.

4. Your absence from your assignment as a result of the incident/injury.

(AND)

5. The issuance of prescription medication by a physician as a result of the incident/injury...."

After suffering the strain on February 24, 1999, Claimant continued working unrestricted in fulfilling his duties.

On the weekend of February 27, 28, 1999, Claimant sought a doctor to obtain something that would permit him to sleep. On Monday, March 1, 1999, Claimant reported to work as usual and one hour later was directed to report to the Division Office for an Injury review. During this interview, Claimant freely related obtaining a prescription for a medication to assist in sleeping. Upon this revelation, Claimant was immediately removed from service. An investigation was held, following which Carrier affirmed its position to permanently withhold Claimant from service on the allegation he failed to abide with Items 1 and 5 of the Non-Reportable Injury Status Change form.

The Board cannot agree. Claimant acknowledged his awareness of that required by anyone filling out the Non-Reportable Injury Form, including Items 1 and 5 of that quoted above. During the Injury review, Claimant readily, openly and candidly advised he did obtain a prescription for a medication that would assist him in sleeping, and that on Friday and Saturday, February 26 & 27, 1999, he did take the prescribed dosage but refrained from doing so on the eve of February 28 as he stated he wanted nothing alien in his system when he reported for work on March 1, 1999. Claimant also stated that on or about 1100 hours on February 26, 1999, he contacted the Roadmaster's Office, related to the party answering the phone that he had been unable to contact the Roadmaster, and would he tell the Roadmaster

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of his intent to contact a doctor to secure something that would help him sleep.

The employee to whom Claimant spoke at 11:00 AM testified that Claimant did call relating to him of his intent, then testified he failed to inform the Roadmaster of Claimant's call.

To this Board, Claimant did comply with instructions. The employee who answered the Roadmaster's phone on February 26 does relay messages to and from the Roadmaster. That, apparently, is as much a part of his office assignment as any other reason he is so assigned.

The Carrier has not sustained its burden of furnishing substantial evidence of Claimant's culpability for the charges assessed. The claim is sustained. All traces of the investigation are to be removed from Claimant's record and he is to be paid all time lost commencing March 1 thru June 1, 1999, as provided for in the Schedule Agreement.

AWARD

Claim sustained.

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: November 14, 2000

