

PUBLIC LAW BOARD NO. 6103

Award No.
Case No. 23

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 June 15, 2000, Mr. M. E. Frisbie was dismissed* from service for allegedly falsifying an injury and for being injury prone while work as a Trackman on UC-02 near Hogan, Arkansas.

2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. M. E. Frisbie shall be returned to service with seniority and all other rights intact, shall have any mention of the discipline removed from his personal record, and he shall be compensated for all wages lost in accordance with the Agreement.

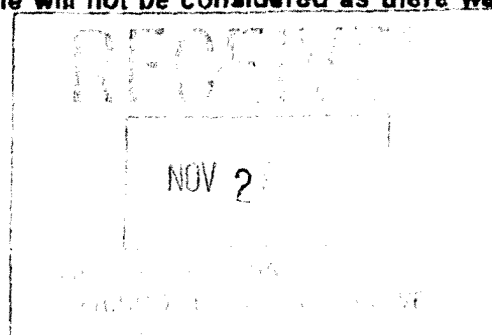
FINDINGS

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.

As is evident by Item 1 of the Statement of Claim, the charge of falsifying an injury, if proven by substantial evidence, warrants dismissal regardless of the individual's history with the Carrier. That charge is the same as perpetuating a fraud against the Carrier, i.e., theft as usually the individual is seeking money under a false pretense.

The second charge of being injury prone will not be considered as there was no

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evidence presented in an attempt to substantiate that charge.

The incident occurred when Claimant riding in the rear seat of a van, was thrown into the air when they drove over a crossing at between 15 to 25 MPH. Claimant contended he was hurt but declined a doctor's service on the day of the incident, and in fact, when the van driver pulled over immediately after bouncing across the crossing and asked if anyone was hurt, all including Claimant responded negatively, but he did fill out a First Aid Report.

On June 5, Claimant advised his Supervisor that he believed a doctor's exam was needed in connection with the injury he reported on the First Aid Report. Upon returning from the doctor's office, Claimant was advised he was dismissed from Carrier's service for falsification of an injury and for being injury prone.

Claimant stated in the injury report that he hurt his "left side back in rib area," but during the investigation he apparently could not make up his mind to what part of his anatomy was hurt. He stated at one point he bumped his head and ribs on the right side, then at another point he stated he injured his left side including his left shoulder, and finally he stated he hurt his right lower back and his left shoulder. To further confuse the issue, after Claimant did go to a doctor, there was no medical report presented that would establish whether he did indeed suffer a minor injury. It seems logical to the Board that faced with a charge of falsifying an injury, even if it was as minor as a slight bruise, a scratch or a stiff muscle, such a report would have exonerated Claimant from any such charge of falsifying an injury. Conversely, if the doctor could find nothing wrong and said so in writing, the Carrier would have proven its case by substantial evidence.

Unfortunately no report was made, or at least recorded, at the investigation which hinders Carrier in establishing the evidence necessary to sustain the amount of discipline rendered.

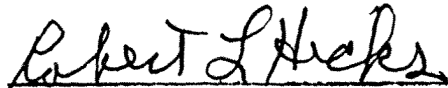
This Board has only the record of the investigation to determine if Carrier fulfilled its obligation to furnishing sufficient evidence of Claimant's culpability for the charges assessed. The record reveals he completed an incorrect injury report and it also established his negligence in not wearing a seat belt, but unfortunately that was not the charge nor what he was found guilty of and dismissed.

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, Chairman & Neutral Member
Public Law Board 6103

Dated: Nov. 26, 2001

Dissent to the Award in Regard to Case No. 23 of PLB 6103

The Majority determined that the Carrier failed to prove that the charged employee had falsified an injury and therefore, sustained the Organization's claim. However, the Majority also determined that the Claimant had "completed an incorrect injury report" as well as the fact that the Claimant was "not wearing a seat belt". As the Award pointed out, during the hearing the Claimant could not pinpoint the location of his injury and alleged he injured "his left side including shoulder" and finally "his right lower back and his left shoulder", even though his injury report clearly reflected he had injured his "left side back in rib area". Clearly the Claimant, if he actually received the injuries he alleged he had received during the hearing, did not injure "his left side back in rib area" as he had reported on his injury report. He clearly falsified the injury. He reported an injury he did not receive. His actions were more than just completing an incorrect injury report.

The discipline Rule on the former SLSF requires the Carrier to assess discipline first, and then, if the employee disciplined does not agree with the assessment of discipline, the employee can request a hearing. The Carrier, when disciplining employees under the Rule must make an educated determination concerning the actions that resulted in the discipline. However, sometimes during the hearing additional or different information is uncovered that should be considered in the assessment of discipline. For years the Carrier has made reviewed discipline determinations after assessing all of the information presented during the hearing and this case is no different. However, this Award puts the Carrier in a position to have to determine if an employee violated Rules that may not have been considered in the assessment of the initial discipline. If that is the case the Carrier will then have to decide if additional discipline should be assessed. If the discipline is assessed, then the disciplined employee would have to request another hearing to determine if the additional discipline was warranted. This is a change that, this writer believes, is not good for either party. However, the Award gives the Carrier no choice.



Thomas M. Rohling
Carrier Member PLB 6103