

AWARD NO. 3

Case No. 3

Organization File No. OC-STL-01-7

Carrier File No. OC-STL-01-7

PUBLIC LAW BOARD NO. 6433

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
)
TO)
)
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim filed on behalf of Conductor W. R. Yunker for reinstatement to service, payment for all time lost, including time spent attending Investigation, and restoration of seniority, vacation and all other benefits following discipline of dismissal assessed following formal Investigation conducted on November 2, 2000.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 9, 2001, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant reported for duty as a yard foreman at 11:30 pm on Friday, September 22, 2000, and completed his assignment at 7:42 am the following morning. At approximately 6:14 pm on September 23, 2000, Claimant called to mark off sick. According to the Carrier, Claimant said he had been out the previous Saturday, and went to the hospital, and would probably be off for a couple of days. Claimant went to the hospital sometime during the evening on September 24, 2000, and was prescribed Motrin and Vicodin. He was given a form by the hospital, indicating he may return

to work and resume regular duties on September 27, 2000. At 1:30 am on September 25, 2000, Claimant submitted an injury report alleging he had received a personal injury at 5:00 am on September 23, 2000. According to the Claimant's report, he sustained this injury while adjusting the drawbar on a car. He says he felt a pull in his groin area during this procedure. Claimant informed Superintendent Wilson that the car was a bulkhead flat. Claimant subsequently saw another doctor who diagnosed him as having a strained right groin muscle. The doctor prescribed physical therapy and restricted Claimant from working.

By letter dated September 28, 2000, Claimant was directed to attend a formal investigation at which he was charged with (1) falsifying an injury, (2) failing to properly report an injury, (3) failing to comply with instructions and (4) making false and conflicting statements. Following the hearing, Claimant was dismissed from service. By letter dated November 14, 2000, the Carrier notified Claimant he was found guilty of all aspects of the charge, and was dismissed from service.

Upon our review of the record, we find there is substantial evidence to support the Carrier's charge that Claimant violated the Carrier's rules regarding the prompt reporting of personal injuries. Claimant acknowledged that, while he was on a break during the shift in question, he told his brakeman that he may have injured himself. Furthermore, Claimant was certain as to exactly how this injury occurred, even to the extent of remembering what type of car was involved. Nevertheless, Claimant did not report his injury until after he had already gone to the hospital, two days later. If Claimant later felt his pain might have been from some other cause, such as appendicitis, the safe course would have been to protect himself by indicating the possibility that the pain was caused by the work he was doing.


Numerous arbitral panels have recognized the Carrier's right to require employees to report injuries as soon as it becomes apparent that an injury has occurred. Such rules are so well entrenched in this industry that it is too late to question their legitimacy. This Board concurs with the Carrier's right to impose discipline upon employees who fail to comply.


We also find that Claimant did not comply with the instruction given to him by Assistant Superintendent Nasello, that he was to advise him immediately after his September 26, 2000, doctor's appointment. The record shows Claimant did not do so until a day later. Because this was an FRA reportable injury, Nasello had an interest in obtaining information about Claimant's condition on a timely basis.

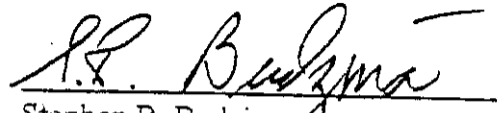
We do not find there is sufficient evidence in the record to support the Carrier's conclusions that Claimant falsified his injury report, or that he made false or conflicting statements. While there may be some discrepancies in the statements made by Claimant and his brakeman, we do not find them to be intentionally misleading. While the Board makes no finding as to whether or not Claimant actually received an on-the-job injury, we find the Carrier has failed to meet its burden of proving that he did not.

Although we consider Claimant's delay in reporting the injury, and his delay in reporting the results of his later examination, to be serious offenses, we do not agree that permanent dismissal was warranted. We find no evidence of malice in Claimant's actions, but, rather, a poor exercise of judgment. Accordingly, we will direct that Claimant be reinstated to service without loss of seniority, but without compensation for time lost. Claimant should understand that any further failure to comply with the Carrier's rules and regulations may subject him to permanent dismissal.

AWARD: Claim sustained in accordance with above Findings.


Barty E. Simon
Chairman and Neutral Member


Paul T. Sorrow
Employee Member


Stephen R. Budzina
Carrier Member

Dated: 1/25/02
Arlington Heights, Illinois