

Before
SPECIAL BOARD OF ADJUSTMENT
No. 974

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United Transportation	.
Union (C & T),	.
	.
Union	.
	.
v.	.
	.
Metro-North Commuter	.
Railroad Company,	.
	.
Employer	.
	.
-----x	

AWARD NO. 4

Dispute Concerning
Discharge of Conductor
M. A. Normoyle

CLAIM:

The Organization's statement of claim is that Conductor M.A. Normoyle be returned to service with seniority and all other agreement rights unimpaired and pay for all time lost as a result of carrier's unjust action in dismissing him from its employ in connection with the following charge:

Falsifying report of a personal injury to yourself when you called Chief Dispatcher's Office at 10:17 p.m., February 3, 1986, in violation of Rule D of Metro-North Rules of the Operating Department.

FINDINGS:

The carrier has the burden of proof to show that claimant conductor M.A. Normoyle falsified a report of personal injury, as charged.

The carrier did not meet that burden.

The issue is whether there is sufficient evidence to support the carrier's charges that claimant conductor Normoyle falsified a report that he had bumped his head while looking out a train window, in the station, checking his train, as he reported by telephone after the completion of his assignment.

The evidence of record^{1/} establishes that on February 3, 1986, at about 8:40 p.m., at Grand Central Terminal in New York, Trainmaster/Road Foreman James Sorrentino, on claimant conductor Normoyle's train, was "making train riding reports and employee observations and I just happened to be on Train 1384".

According to Sorrentino: he was standing in the same car as conductor Normoyle; the conductor was "in the engineer's cab trying to get a door closing light and give the engineer the closing signal"; the cab door was open; he was standing in the aisle holding the door open with his left foot; he did not see Normoyle hit his head on the frame of the window; he was "never in the cab standing next to him at the time of clearance"; he did not observe any injury and did not get a report from the conductor that he was hurt; employees are required to report an injury immediately; he did not check the conductor's timetable prior to departing Grand Central Terminal "because we had a door problem which had to be corrected before we could depart requiring Mr. Normoyle's immediate attention"; he has received complaints from engineers about the new slide window in use "that they are not as easy to open and close as we would like them

^{1/} The parties in the proceedings before this Board added factual information not subject to cross examination or to other usual due process safeguards in a judicial-like proceeding as, for instance, the investigation on the property of the charge against the claimant where: the claimant was represented; there was an opportunity for cross examination; and there was a transcript of the proceedings.

to be"; and that based on complaints from conductors "who constantly put [their] head outside to inspect platforms", "[t]here is not enough room to look out as we would like".

According to Normoyle: Sorrentino unlocked the cab door and inspected his railroad materials; at the same time he was trying to get the train off the platform, but could not because he was missing a door light; the trainmaster was inspecting his railroad materials, which were in the cab and the trainmaster could not have been more than an arms' length away; he bumped the top of his head, causing a bump on his head, scratch and dried blood; and, he did not ask for medical assistance but telephoned an injury report at destination in Stamford, Connecticut, about an hour and a half after leaving Grand Central Terminal.

According to the official who received Normoyle's telephone injury report: the conductor reported he had smacked his head while checking door problems because there was not adequate clearance based, at least in part, by being crowded by the presence of the trainmaster in the cab; Normoyle claimed abrasions, contusions and headache, but declined medical assistance.

The carrier charges the claimant with violations of Rule D. This rule requires employees to carry out company rules, refrain from conduct which would adversely affect performance of duties, and requires that they not be insubordinate or show hostility or willfully disregard the company's interests.

The carrier's letter of discipline of March 4, 1986 charges conductor Normoyle with falsifying a report of personal injury, in violation of Rule D.

The only hard evidence supporting the carrier's charges is that Sorrentino did not see Normoyle bump his head and that Normoyle did not then report such bumping to Sorrentino while he was there, or near the cab.

This evidence is sufficient to raise a question whether such bumping did occur but without identifying a motive for Normoyle giving a false report, such evidence is not sufficient to justify a charge of falsifying an injury report and, thus, dismissal.^{2/}

The conductor's account of events is plausible, if not compelling.

The window was small. The conductor was having door troubles. He was trying to get the train out. A bump on the head sometimes takes an hour or so to manifest into a visible bump or scratch and headache, accounting for a later report where the company insists on reports of any and all injuries, and where the conductor sought no medical assistance and filed no claim.^{3/}

^{2/}

At the Board level, it was suggested by carrier advocates that Normoyle made up his injury report to get Sorrentino in trouble for causing the accident and that Normoyle made up this report to retaliate against Sorrentino who had written up the conductor previously for missing or incomplete railroad materials. In a dismissal case on appeal, such extra-trial representations are entitled to little or no weight.

^{3/}

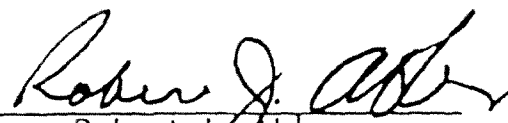
Three written, signed, reports from fellow employees were submitted by union advocates at the Board level of these proceedings. One report stated that Sorrentino was partly in the cab; the two other reports stated that the reporters saw the bump on Normoyle's head, one report being that the employee also saw scratches and dried blood. These statements suffer from the same limitations as the carrier's extra-trial representations concerning motive.

The carrier was not persuasive that conductor Normoyle had filed a false report establishing that he was a "dishonest" employee. A charge of moral turpitude such as this requires much more evidence than was presented by the carrier. Accordingly, the carrier has not shown there was just cause to discharge the claimant.


AWARD:

The claim is sustained.


The carrier shall, forthwith, offer to reinstate the claimant, with seniority and all agreement rights unimpaired. Whether or not the offer is accepted by the claimant, the carrier shall make the claimant whole for wages lost as a result of his termination from employment.


Robert J. Ables
Chairman

Dated: *September 16, 1946.*


M. J. Kurtz
Carrier Member

Dated: *Sept 17 1946*


E. F. Farley
Employee Member

Dated: *9/19/46*