

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 120
Case No. 120

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Backhoe Operator P. W. Tuttle for his alleged falsification of an injury, failure to properly notify a supervisor of the alleged injury and failure to notify a supervisor prior to seeking medical attention was without just and sufficient cause, based on unproven charges, in violation of the Agreement and an abuse of discretion (Carrier's File MW-FTW-01-102-LM-474).

2. As a consequence of the violations referred to in Part (1) above, we now request the Carrier to immediately reinstate Claimant P. W. Tuttle with his established seniority, vacation and all other rights and benefits unimpaired and we further request that Claimant Tuttle be paid for any and all straight time and overtime hours at his respective backhoe operator's rate of pay, which would have been entitled to him had he not been wrongfully removed from service, beginning December 4, 2001 and continuing until such time as Claimant Tuttle has been fully reinstated.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and

2. That the Board is duly constituted by agreement under

Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.

3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The Carrier employed the Claimant as a Machine Operator. The Claimant, whose date of employment was October 20, 1969, operated a backhoe on November 12, 2001. The Claimant performed the assignment of "trammimg the backhoe" by driving a backhoe approximately 25 miles from Hamilton to Eaton, Ohio.

The Claimant asserted that he had become injured on November 12, 2001 while trammimg the backhoe. The Claimant described that he had told Supervisor Coleman on Monday, November 12, 2001 that the "backhoe was beating me to death running it up and down the road." (Carrier's Exhibit A at page 80 of 130 and Organization Submission at 3.)

The record includes medical documentation from the Mary Rutan Hospital in Bellefontaine, Ohio that confirms that the Claimant had arrived at the medical facility at 1:16 a.m. on November 14, 2001 and had left the facility at 2:45 a.m. on November 14, 2001. The medical documentation further provided that the Claimant should remain off work until the next medical evaluation in three days. (Carrier's Exhibit A at page 127 of 130.) Additional medical documentation, dated November 16, 2001, from Dr. Leo A. Escobedo diagnosed that the Claimant had "sprain lumbo sacral" and could return to work on November 30, 2001. (Carrier's Exhibit A at page 129 of 130.)

Rule N provides:

When any person is injured as [sic] result of an accident, emergency medical assistance must be called if needed.

Every accident resulting in injury, death or damage to property must be reported to the proper authority by the quickest communication available.

An employee who sustains a personal injury while on duty or on Company property or equipment must, before leaving Company premises, report it to his immediate supervisor and complete and sign a written report of the incident using the prescribed form. If the injury to the employee is of

such a nature that the employee is unable to complete the written report, then the injured employees [sic] immediate supervisor will complete the form. The written report and facts of the incident will be promptly progressed through prescribed channels

An employee who sustains an off-duty personal injury or illness adversely affecting his ability to perform his regularly assigned duties must inform his supervisor of the injury/illness before reporting for his next shift or tour of duty.

If an employee at any time obtains medical attention or marks off for an on-duty injury or occupational illness, he must promptly notify his supervisor.

When injuries or death to other than railroad employees and damage to property occurs, a written report on the prescribed form must be submitted promptly. The report must include the name and address of each injured person and describe the extent of injury. Names and addresses of all persons at the scene are required, whether or not they admit knowledge of the accident.

At a crossing accident, the conductor or employee in charge must try to locate witnesses who can testify about engine whistle or bell signals and about the functioning of any crossing gates or flashing light signals. License tag numbers of vehicles observed near the crossing must also be reported.

The record indicates that the Claimant contemporaneously informed his supervisor about the effect on his back of "tramping the backhoe" for approximately 25 miles from Hamilton to Eaton, Ohio. The record further proves that the Claimant made a good faith effort to inform his supervisor about his medical treatment at a hospital as soon as reasonably practical after the visit to the hospital facility during the middle of the night after the Claimant no longer could tolerate the pain. Thus, the record omits any credible evidence that the Claimant falsified his injury.

The record, however, indicates that the Claimant failed to provide enough information about his injury to supervisory personnel at the time of the injury on November 12, 2001. In

addition, the Claimant failed to provide enough information about his condition to supervisory personnel at the time of his visit to the hospital on November 14, 2001. As a result, these failures violated the Claimant's affirmative obligations under Rule N.

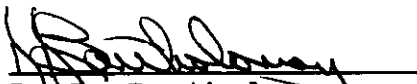
Under all of these particular circumstances, the Carrier failed to prove that the Claimant had falsified an injury. As a result of the ambiguity in the manner in which the Claimant reported the injury and the subsequent visit to the hospital, the remedy shall provide for the Carrier to reinstate the Claimant with seniority but without any back pay.

AWARD:

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board therefore finds that the Claim should be disposed of as follows:

The Claim is sustained in accordance with the Opinion.
The Carrier shall make the Award effective on or before
60 days following the date of his Award.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated: 12/28/02