

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 455

Case No. 455
UP File 900015

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad
(Former Missouri Pacific Railroad Company)

Statement

of Claim: 1. Carrier violated the agreement, especially Rule 12, when Trackman W. E. Reed was dismissed from service on September 5, 1989.

(2) Claim in behalf of Mr. Reed for wage loss suffered beginning August 17, 1989, until reinstated with seniority, vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

Claimant, Trackman W. E. Reed, following a formal investigation held, on August 17, 1989, on the charge that he failed to promptly report an alleged personal injury occurring at Pacific, Missouri, during the period of May 5, through 22, 1989 until July 31, 1989 and also for falsification of a personal injury occurring at Pacific, Missouri during the period of May 5 through 22, 1989 which was reported on July 31, was found culpable. He was dismissed from service, on September 5, 1989, as discipline therefor.

The BMWE agrees that Claimant did not fill out a personal injury report until July 31, 1989. They also assert that he notified his foreman the 1st of May and the Manager of Rail Relay McCray, on June 3 or 4 that he was ill and under a doctor's care. They further assert that Claimant's injury report cannot be defined as a falsification because he did not intentionally mistake the truth, he did not know the true nature of his injury until his physician sent him to Missouri Pacific Deaconess Hospital where he was referred to a neurologist.

The question as seen by the organization for the Board to answer is when should a personal injury report have been made out.

Our Board in its Award 274 stated:

"The purpose of filling an injury report is well known. It allows the Carrier to give medical care to the injured

employee to mitigate its liability exposure and to correct any condition given rise to the injury itself. Further, it causes and permits the Carrier to immediately investigate the incident. It is also held that such a rule is so significant that a failure of compliance can result in dismissal."

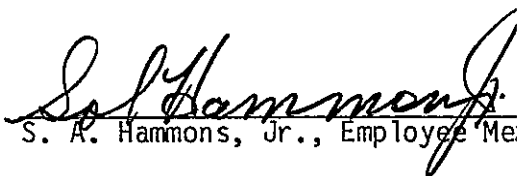
The Claimant in the instant case did not suffer an injury per se. Rather, he alleged that because of using the jackhammer the vibrations therefrom caused a pain in his left shoulder. The symptomology expressed by the Claimant seems to be more FELA oriented than an injury. Whatever the Claimant does have, does not appear to be the result of a specific injury, occurring at a specific time. In any event the backup and filing of the report appears to be more of a basis to provide support for a condition involving a pinched nerve. It was not attributable to any specific incident.

The Carrier knew nothing of the Claimant's injury, alleged or otherwise, until he belatedly filed his report. As pointed out our Award 274 covers the point of when to file an injury report. The facts are against this employee.


The Claimant was accorded the due process to which entitled.

There was sufficient evidence to support Carrier's conclusion that the report was belatedly filed. Carrier's disciplinary action does not appear to be unjust, discriminatory, arbitrary or capricious. Therefore, we may not interfere and substitute our judgment therefor. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued March 20, 1991