

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 513

Docket No. 513  
File 900705

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Welder Helper D. J. Barnes was dismissed on August 2, 1990.

(2) Claim on behalf of Mr. Barnes for wage loss suffered, beginning June 29, 1990, until reinstated with seniority, vacation and all other rights unimpaired.

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

The Claimant, Donald J. Barnes, was notified under date of July 3, 1990 to attend a formal investigation on the charges:

"(1) Falsified injuries or the extent of injuries, reported by you to have occurred on or about October 19, 1989, while working as a Welder Helper on the Van Buren Service Unit near Ft. Gibson, OK.

(2) Falsified the reasons for your absence(s) from duty during the period October 20, 1989 to present and received salary continuation payments under false pretenses during the same period.

(3) Withheld information from and/or furnish medical practitioners and company representatives fraudulent, false, misleading and/or exaggerated information regarding your physical condition; physical limitation, physical activities and your ability to perform various physical activities during the period since your alleged injury of October 19, 1989."

The Carrier concluded therefrom that Claimant was culpable of the charges. He was dismissed under date of August 30, 1990, as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient, competent, and probative evidence adduced to support the Carrier's conclusion as to the culpability of Claimant. Claimant, in essence, asserted that he could not do any repetitive bending and stooping, and that he could, literally, do little else than walk as a result of his October 19, 1990 injury.

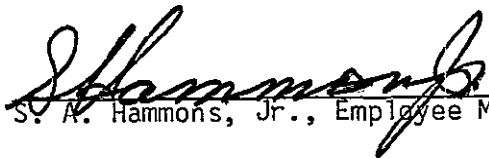
MRI and CAT scan tests failed to reveal any supportive basis therefor. The medical conclusions were so inconsistent with the Claimant's assertions as to provide cause for his being placed under video surveillance for a 5-day period. The tapes thereof reflected Claimant's physical activities to be totally inconsistent with his assertions to three of his doctors. In fact, a review of the tapes caused one doctor, Dr. Fullonwider, after questioning the Claimant, to believe that he, the doctor, was being mislead and the doctor stated:

"I then did discuss with him that I had been shown video tapes of his activities around the house installing glass doors with repetitive bending and stooping, use of heavy tools, etc., along with rototilling and other activities...I did point out that on these tapes I saw no evidence of him having any difficulty with these movements, no evidence of grabbing his back, etc. and told him at that point, based upon his normal exam and his ability to carry out these activities, that he could be released to return to full duty. I have also explained to him that in my opinion he has violated any physician/patient relationship and I do not feel that I can have good faith or trust in this gentlemen further, and thus I am releasing him from my office."

The Board is impelled to conclude that if the injury or injuries were at one point, as alleged by the Claimant, then when observed and video taped, they were not as alleged by Claimant to the Carrier or the doctors.

Consequently, the discipline imposed of dismissal is not unreasonable. Such falsification was dishonest and shredded the bond of implicit trust in the employee-employer relationship. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
R. O. Rock, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued March 24, 1992.