

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 550

File 910480
Docket No. 550

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

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12,
when E. L. Franklin was dismissed from service on March 10,
1991.

(2) Claim in behalf of Mr. Franklin for wage loss suffered
beginning May 10, 1991, until reinstated on August 15, 1991.

Findings: The Board has jurisdiction by reason of the parties
Agreement establishing this Board for that purpose.

Trackman E. L. Franklin suffered an on-duty injury to
his back on March 12, 1991. The Superintendent of
Transportation Service, Steve Hefly, talked with Mr.
Franklin on March 13. The Claimant had not yet seen a
doctor. He did not know the extent of the injury. While
attempts were made between March 13 and April 18 to contact
Claimant and to contact his place of business, a nursery,
such contacts were to no avail.

On April 8, 1991 the following letter was sent to the
Claimant:

"Report to Manager of Track Maintenance W. E. Moon's office,
Wednesday, April 10, 1991, at 9:00 AM, at which time you
should present documentation supporting the reason why you
have been absent from your assignment. If you do not have
or fail to present documentation justifying your absence,
you should be prepared to submit to a physical examination
at that time."

WTM Moon on April 10 received a call about 8:50 AM from
a Mr. Trice, an attorney representing the Claimant. Trice
advised Moon that Carrier already had the records necessary
concerning Mr. Franklin's medical condition. Mr. Moon
called the Claim Department's representative who advised
that they did not have a record because the Claimant had not
yet signed a release therefor. The Claimant reported to
Moon's office at 9:13 AM on April 10th and presented two
pieces of paper. The first note read:

"Dr. Richard Nux
224-6900
LR Orthopedic Clinic
102-FRAIN - 140/10
E 4R"

The other sheet was a unsigned "Radiology Report" from the Southwest Hospital at Little Rock concerning the Claimant. It reflects his physician was Dr. Sung, that he was examined on March 27, 1991, that diagnosis was a back pain and that the examination was for a "lumbar spine CT." It then read "scans were obtained with 4mm collimation at 3mm intervals from the pedicles of L3 through S1."

"Findings: The examination demonstrates the spinal canal to be developmentally small. Mild central bulging is noted at L3-4, along with moderate central bulging at L4-5, and mild central bulging at L5-S1. No other abnormalities are identified."

James A. McDonald, MD/srh (unsigned). (handwritten note - pt. notified)"

Superintendent Hefly was dissatisfied with unsuccessful attempts to contact the claimant as he was notified to attend a formal investigation on the charge:

"to develop the facts and place your responsibility, if any, in connection with your alleged failure to comply with instructions of S. L. Hefly when you failed to report to Manager of Track Maintenance W. E. Moon's office at 9:00 AM on April 10, 1991, as instructed in letter to you dated April 8, 1991."

As a result thereof, Carrier concluded therefrom that Claimant was culpable. The Claimant was dismissed from service on May 10, 1991 as discipline therefor for his failure to comply with the instructions of April 8.

The Claimant was reinstated to service on August 15, 1991 with the right to progress his claim for all wage losses incurred.

Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced to support the Carrier's conclusion as to the Claimant's culpability. The word "documentation" as defined by Webster's New World Dictionary, Second College addition, reads:

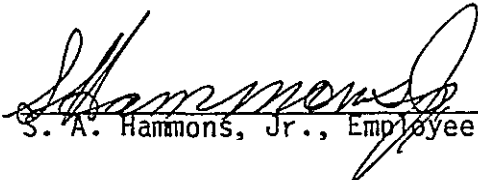
"N. 1. The supplying of documents or supporting references; use of documentary evidence. 2. Documents are referenced thus supplied. 3. The collecting, abstracting, and coding of printed or written information for future reference."

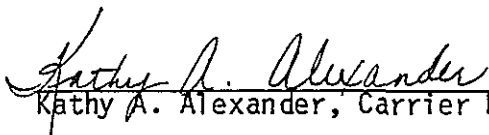
It is very clear that the Claimant did not comply with the instructions of April 8 given him. What he offered was not in compliance with the Carrier's letter. Those two were not documentation. The employing/supervising officer does not treat with an attorney. He does treat with a Union Representative but not with an attorney. If there is legal matter between the employer and the Claimant, that is a legal matter. The instant matter involved the Claimant's employment status. No employee can be absent from his place of employment without a reasonable rationale therefor. When the Claimant was injured he told Superintendent Hefly and advised him that he was going to see a doctor. That was March 13, 1991. The Claimant had been off since March 13 through April 8. In fact, notwithstanding that he was reinstated on August 15, 1991, the Claimant has not yet been back to work.

Our Award No. 323 advised as to an employee's responsibility to respond to instructions. When an employee is injured particularly on the job and does not report for work, a presumption is created that the absence, in all probability, may be caused by the injury. The Claimant was requested to present some documentation therefrom. That meant medical documentation showing a diagnosis and a prognosis. The Claimant failed. The discipline assessed was proper and not unreasonable.

There is no basis whatsoever for the monetary claim. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


Kathy A. Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 28, 1992.