

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 604

Docket No. 604
U.P. File No. 920621

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 N. L. Harding (SSN 440-58-1092) was dismissed from service on July 15, 1992.

(2) Claim in behalf of Mr. Harding for wage loss suffered beginning June 29, 1992, 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.

The Claimant, Machine Operator Norman L. Harding, was notified under date of June 29, 1992 to attend a formal investigation on the charge:

"...you failed to properly report an alleged personal injury occurring on approximately May 17, 1992 in the vicinity of Alma, Arkansas; and also falsification of a personal injury occurring at Alma, Arkansas on approximately May 17, 1992 which was reported on the Personal Injury/illness Report dated June 5, 1992, while working as Machine Operator on Gang 9105."

Carrier found him guilty. He was dismissed from service as discipline therefor.

The Claimant, on May 18, 1992, notified Manager Buck McCray that his knee was hurting him and that he would go to his personal physician during the off period.

Gang 9105 worked a compressed month, i.e., from the first to the 20th, then observed the balance of the month as rest days. The Claimant returned after the break and worked June 1 and 2, and was off June 3 in order to go the doctor. June 5, Claimant submitted a report of personal injury indicating that he sustained a personal injury at 1:15 PM on May 17, 1992.

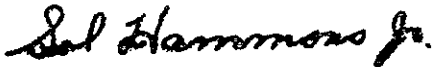
The record reflects that the Claimant had been complaining about his knees hurting prior to May 17, 1992. In fact, he had complained about his knees for the previous 2 or 3 years.

The testimony also indicated what Claimant told the Acting Foreman and the supervisor regarding the alleged injury. The Claimant's complaint primarily indicated that no accident had occurred but that "he was hurting." Such is not anything unusual in the MofW Department. The reporting of an injury was more of a belief that the Claimant was forced into reporting it as an injury when he was seeking, without so expressing, a means of receiving given some guidance. Therefore, he said that the crane was hurting his knee.

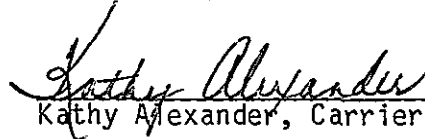
Claimant has a relatively clean record. He has long service. The injury report was not made maliciously. Consequently, the Board will make a bench decision and reinstate the Claimant to service but without back pay subject to the usual physical examinations. This claim will otherwise be denied.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



S. A. Hammons, Jr., Employee Member



Kathy Alexander, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 27, 1993.