

AWARD NO. 218
CASE NO. 305

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Machine Operator F. L. Jackson was wrongly and unjustly withheld and dismissed from service."

2. Claimant Jackson shall now be paid for all time lost commencing March 3, 1986, and on a continuing basis until such time as he is allowed to return to service, with seniority, vacation, and all other benefits accruing to him." (MW-86-21-CB-Jackson; 53-913)

OPINION OF BOARD:

Claimant, a Machine Operator in the Carrier's service since January 10, 1974, was withheld from service pending formal investigation effective March 3, 1986 and, after hearing on April 16, 1986, was dismissed from service effective April 22, 1986 for dishonesty and failing to promptly report an on-duty injury in violation of Rules 607 and 806.

The investigation revealed that while working on February 25, 1986, Claimant felt a pull in his back. On February 26, 1986, Claimant woke up with a pain in his back. Claimant had a discussion with his Roadmaster on February 26, 1986 and informed the Roadmaster of the back difficulty. Claimant told the Roadmaster that although he was not certain, he did not believe or did not know that the injury was job related. On the same date, Claimant was hospitalized with a lower back and buttocks strain and was released on February 28, 1986. On March 3, 1986, Claimant reported an on-duty injury for February 25, 1986.

Initially, we reject the Organization's argument that Claimant was deprived a fair hearing because the Division Engineer was the charging officer and the individual making the initial decision on the investigation. As discussed in Public Law Board 3558, Award 52, it must be determined on a case by case basis if the procedure utilized prejudiced the employee's due process rights. Here, subsequent appeals were handled separately by the Carrier's Superintendent and Labor Relations Officer and a review of those appeals and the responses thereto along with the type of facts presented in this case satisfies us that the employee was not prejudiced in this matter by the multiple roles played by the Division Engineer.

Similarly, the fact that certain evidence was received by the Hearing Officer concerning previously held safety meetings and whether that evidence showed Claimant's presence does not require the issuance of a sustaining award. Claimant admitted that he has attended such meetings and further admitted that he was aware at the time the incident occurred that he was obligated to promptly report injuries incurred while on duty.

With respect to the merits of the Claim, we find substantial evidence exists in the record to justify the Carrier's decision that disciplinary action was warranted. Rule 806 requires the prompt reporting of "all cases of personal injury, while on duty" Claimant waited from February 25, 1986 until March 3, 1986 to make such a report. Under the circumstances presented, we do not consider Claimant's actions as falling within the requirement of the rule.

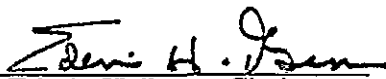
However, under the facts presented, we are of the opinion that the penalty of dismissal was excessive. The circumstances presented demonstrate that although Claimant should have reported the accident sooner than he did, there is some doubt as to when it was clearly apparent that the accident was job related. Although Claimant improperly delayed reporting the accident, we do not feel that the delay was of such a degree that dismissal was warranted. We shall therefore require that Claimant be returned to service with seniority and other benefits unimpaired but without compensation for time lost. Return to service is

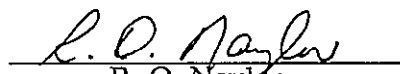
conditioned upon Claimant's successful completion of a return to service physical examination.

Finally, the Organization asserts that the withholding of Claimant from service pending the outcome of the investigation was improper. We agree with Organization that under the facts of this case, Claimant's misconduct was not of the degree permitting the Carrier to withhold him from service pending the outcome of the investigation. We shall therefore award that Claimant be compensated for the period that he was withheld from service until his dismissal, i.e., from March 3 through April 21, 1986.

AWARD:

Claim sustained in accordance with Opinion. Claimant shall be returned to service with seniority and other benefits unimpaired. There shall be no compensation for lost wages from the time of his dismissal. Return to service is conditioned upon successful completion of a return to service physical examination. Claimant shall be compensated for the period March 3 through April 21, 1986.


Edwin H. Benn, Chairman
and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Tyler, Texas
July 20, 1987