

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

STATEMENT OF CLAIM

1. The dismissal of Machine Operator M. W. Hayes for alleged "... violation of Rules 607 and 806 of the Rules for the Government of Maintenance of Way and Engineering Employees...." was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File MW-87-23-CB/53-1019).
2. The Claimant shall be reinstated to service with all seniority and benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD

As a result of charges dated April 13, 1987, investigation eventually held on June 16, 1987, and by letter dated June 19, 1987, Claimant, a machine operator with nine years of service, was dismissed for failing to promptly report an injury in violation of Rules 607 and 806.

The record reveals testimony showing that on March 11, 1987 after reporting for duty at Maple Hill, Kansas, Claimant was assisting a mechanic changing oxygen tanks from one truck to another when Claimant stated "I think my back went". According to Claimant "I did not think it was that serious" Although Claimant asserts that he orally informed those present of the incident, which included Foreman S. C. Lewis, no written report of a personal injury was made at the time.

Two days after the incident Claimant began experiencing pain and discomfort and sought medical attention. Claimant was treated and prescribed medication. Claimant continued to perform service until March 20, 1987 when he laid off on personal leave.

Carrier officials testified (contrary to Claimant) to a series of conversations with

Claimant concerning his back. On March 19, 1987 Claimant informed Regional Material Planner - Assistant Division Engineer G. Davis that he hurt his back allegedly lifting his baby out of a crib. At that time, Claimant did not relate that the injury occurred while on duty. Assistant Work Equipment Supervisor R. O. Deal had a conversation with Claimant on March 20, 1987 wherein Deal desired to line Claimant up for work during the following week but Claimant stated that he had a pain in his back and desired to change his vacation. Deal inquired of Claimant about what happened to Claimant's back and Claimant again responded that he injured his back lifting his baby out of a crib. On March 21, 1987 Roadmaster J. T. Palmer called Claimant and asked if he had been injured on the job and Claimant responded that the injury was due to his lifting his child from the crib. Claimant then began a two week vacation commencing March 23, 1987.

Claimant was eventually examined by an orthopedic surgeon on March 23, 1987 who later informed Claimant that he suffered a herniated disc. Claimant then completed the personal injury form on April 7, 1987 and, according to Assistant Trainmaster-Agent C. R. Murray, acknowledged at that time that the injury occurred several weeks previous and that the injury was received while on duty.

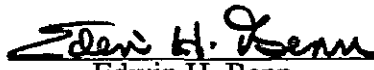
Rule 806 requires that "all cases of personal injury, while on duty, ... must be promptly reported ... on prescribed form" We find substantial evidence supports the Carrier's conclusion that Claimant failed to comply with the requirements of that rule. By waiting the length of time that Claimant did in this matter to report the incident on prescribed form after he had knowledge of the injury and further after he had knowledge that the injury was as serious as it was, Claimant clearly was not in compliance with the reporting obligation. The purpose of the reporting requirement is not only for the Carrier's benefit, but also serves to protect the employee in that appropriate medical treatment can be obtained and further injury avoided. Further, by asserting to Carrier officials that the injury was the result of his lifting his child from a crib, Claimant violated Rule 607 which


prohibits dishonesty. Claimant's differing versions of certain conversations do not change the result. Absent sufficient reasons (which are not in this record), it is not the function of this Board to set aside credibility determinations.


However, given the nature of the injury which did not immediately manifest itself and further considering Claimant's length of service and his lack of a demonstrated adverse prior disciplinary record, under these particular circumstances we find that dismissal was excessive. Therefore, Claimant shall be returned to service with seniority unimpaired but without compensation for time lost. Return to service shall be subject to a return to duty physical examination.

AWARD

Claim sustained in part. Claimant shall be returned to service with seniority unimpaired. Return to service shall be without compensation for time lost and shall be subject to Claimant passing a return to service physical examination.


Edwin H. Benn
Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
June 11, 1990