

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NOS. 132
CASE NO. 132

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim denied

DATE: May 12, 2000

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of employee R. A. Whiteman for his alleged violation of Rule 60.5 and conduct unbecoming an employee "by making false statements concerning your claim of injury that you state occurred on or about May 4, 1998 at Sewickley, PA." was without just and sufficient cause and on the basis of unproven charges (System File CRA-MW-99-15).
2. As a consequence of the violation referred to in Part (1) above, 'The Organization maintains that any discipline imposed on Mr. Whiteman as a result of this Hearing (and Appeal) should be removed from his record, or at the least, be lessened in its severity."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from all service for failing to timely report an injury and for conduct unbecoming as noted in the Statement of Claim. The action arose out his service on Gang RP-230, which was gauging rail in the spring of 1998. Although the gang began its work

in late April, Claimant did not report to the gang until May 4, 1998. He was recalled from a furlough of several months. Claimant worked the entire 4-day week of May 4-7 and proceeded into three rest days. He did not report for work on Monday, May 11th nor did he contact the gang that day. He did call one of the gang foremen, Mr. Jordan, on Tuesday, the 12th, late in the day to report a sore back. According to the foreman, however, when Claimant was asked if he was reporting an injury, Claimant replied in the negative. The foreman relayed the information to the rail train engineer, who telephoned Claimant later that same day. During the conversation, the engineer said he asked Claimant multiple times if he was reporting an injury. Claimant replied in the negative each time.

On September 14, 1998, Claimant contacted Carrier's insurance claim agent. According to the agent, a claim of a work-related injury on May 4, 1998 began to unfold.

During his testimony, Claimant described the date of injury three different ways. One part of his testimony confirms that it occurred on May 4th. Later, he said it was May 6th or 7th. Later still, Claimant he said he didn't know when it was and that the other dates were just estimates. He also asserted that he did report the injury at the time of its occurrence to one of the foremen, but he could not remember the foreman's name. His testimony also contains the following statement when he was asked if he reported an injury to Foreman Jordan:

I reported an injury, but I didn't report; in other words, I was trying to cover my ass.

Rule 60.5, which governs the reporting of injuries, reads as follows:

60.5 Responding to Injuries

Follow these precautions to prepare for and respond to injuries:

1. If you are injured, respond as follows:
 - a. Obtain first aid or medical attention if necessary.
 - b. Inform your immediate supervisor. If your immediate supervisor is not available, inform him or her as soon as possible, but not later than quitting time on the day you were injured.

The record establishes that discussion of this rule, which became effective in 1994, was

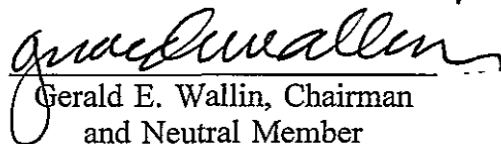
part of the standard agenda for the 3-day safety meetings that precede gang work seasons. Claimant attended such a session in 1997.

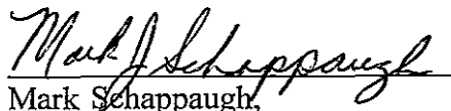
Our detailed review of the record of investigation reveals substantial evidence in support of both aspects of the misconduct charged. In addition, a prior award on this property, cited by the Carrier, shows that dismissal is an appropriate sanction when failure to report an injury is coupled with false statements about the facts surrounding the injury.

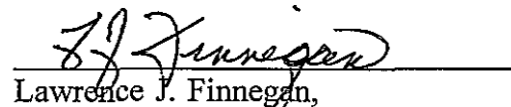
In addition to our examination of the merits of the instant Claim, we have not found evidence of any significant procedural improprieties. Accordingly, we must deny the Claim.

AWARD:

Claim denied.


Gerald E. Wallin, Chairman
and Neutral Member


Mark Schappaugh,
Organization Member


Lawrence J. Finnegan,
Carrier Member

6/7/00