

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 123
Case No. 123

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Machine Operator G. A. Pack for his allegedly giving false and conflicting statements in connection with the injury he sustained on August 27, 2001 was without just and sufficient cause and excessive punishment (Carrier's File MW-BLUE-01-26-LM-323).
2. Machine Operator G. A. Pack shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The present dispute arose as a result of the Carrier's determination that the Claimant, who apparently had an unblemished record since his date of hire on March 18, 1974, was guilty of providing false and misleading statements concerning an

alleged injury at work on Smoothing Gang No. 28 on August 27, 2001. The Claimant alleged that he had reported to work as a Machine Operator (ballast regulator operator) and had suffered a personal injury when he had attempted to climb down from certain equipment.

The Carrier asserts that certain discrepancies exist in the record about the actual injury that the Claimant purportedly had suffered. The Carrier points out inconsistencies in the record concerning whether the Claimant's right hand or left hand had become injured and whether the Claimant had hurt his back.

A careful review of the record confirms that the Carrier proved that the Claimant had failed to comply with the affirmative duty of an employee to make a proper report of an injury in a timely manner to the appropriate supervisor. The report submitted by the Claimant indicated, in pertinent part, that:

As I was dismounting Regulator I felt pain in left hand and had to let go of grab iron and rushed down ladder to ground, I did not fall, I felt pain in lower back.

(Carrier's Exhibit A at page 48 of 48.) Certain statements in the record suggest that the Claimant had indicated that he had hurt his right hand. The record, however, substantiates that the Claimant went for medical treatment, received a half cast or splint for his left hand, and may not have indicated to the treating medical personnel that he had a pain in his lower back.

The report submitted by the Claimant lacks completeness because the Claimant failed to specify how he had hurt his left hand. The Claimant's references to letting go of a grab iron and rushing down a ladder to the ground without falling fail to explain in the required detail exactly what had happened with detailed information as required by the incident report form. If the Claimant had provided additional details about how his left hand actually became injured, the report would have contained more complete information and the Claimant could have avoided any misunderstanding or concern by the Carrier. The Claimant therefore bears the responsibility for failing to provide the necessary information on the report form concerning the incident.

The record, however, remains unclear whether the Claimant actually falsified any aspects of his injury on August 27, 2001. In this regard, it is undisputed that the Claimant received medical treatment at a medical center immediately after the incident and that such treatment included providing a half cast or a splint for the Claimant's wrist and the dispensing of certain pain medication to the Claimant. As a result, the record contains significant probative evidence that the Claimant had a medical condition that required significant medical treatment.

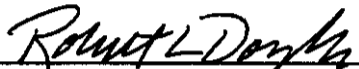
Such medical treatment therefore substantiates that an injury actually occurred to the Claimant.

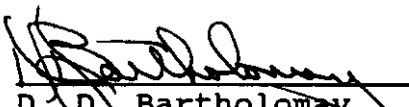
Under all of these highly unusual circumstances, the Claimant shall be reinstated with seniority without any back pay. Any other arguments raised by the parties are found to be immaterial to the proper resolution of the Claim.

AWARD:

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board therefore finds that the Claim should be disposed of as follows:

The Claim is sustained in accordance with the Opinion.
The Carrier shall make the Award effective on or before
60 days following the date of his Award.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member
Dated: 10/28/02


D.L. Kerby
Carrier Member