

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 141

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of G. G. Teesdale for reinstatement to service with seniority, vacation, and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation held on December 11, 2003, in connection with his violation of Rule N for failure to properly report a personal injury that allegedly occurred on October 8, 2003, and making false and conflicting statements in connection with this alleged injury.

(Carrier File MW-ROAN-03-52-SG-369)

FINDINGS

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

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

Claimant G. G. Teesdale began his service with the Carrier as a trackman on April 4, 1977. On October 8, 2003, Claimant was assigned as a machine operator on a production force working near Huntington, Missouri, when the machine he was operating collided with another machine. Claimant allegedly fell forward and sustained his weight with both arms to break the fall. As part of the Carrier's normal investigation process for such a collision, Claimant and the operator of the other machine were immediately removed from service and drug tested. They provided written statements describing the collision, and Claimant's statement did not indicate he was injured in the collision. In fact, he clearly stated that he "Came out unscathed."

Production forces generally work four ten-hour days, Monday through Thursday. The collision occurred on a Wednesday, so Claimant was held out of service for the remainder of Wednesday and all day Thursday. When the preliminary investigation of the collision indicated it may have been caused by a mechanical malfunction in the brake system of the machine being operated by Claimant, he was allowed to return to work the following Monday, and he was paid for the time he was withheld from service.

Claimant worked Monday, October 13th and Tuesday, October 14th without incident. He reported for duty and worked an hour on October 15th, but then was placed on "medical hold" under instructions from Carrier's medical department, for unspecified reasons. At no time on any of the dates from October 8th to 15th did Claimant report to any Carrier officer that he believed he had sustained a personal injury in connection with the October 8th collision.

Nevertheless, Claimant contends he was sore and experienced difficulty working after the accident. After his removal from service on October 15th, he went to an emergency room complaining of soreness in his groin and back because he was experiencing "pretty bad pain" while making the five hour drive home that day. He told the examining physician that he had been in an accident at work, but contends he did not say he was injured at work. Even after receiving medical care at the emergency room on October 15th, 2003, Claimant still did not notify his supervisor that he had received medical attention, nor did he notify any Carrier officer that he had allegedly sustained an injury. Therefore, Carrier was not aware that Claimant alleged he had sustained an on duty injury as a result of the October 8, 2003 collision until November 13, 2003, when they received a letter from Claimant's attorney.

Upon receiving the letter from Claimant's attorney, Carrier charged Claimant with failure to properly report an injury under Rule N, and making false and conflicting statements regarding the alleged injury. An investigation was held on December 11, 2003, and Claimant was advised by letter dated December 29, 2003, that he was dismissed from service.

The record in this case clearly proves that Claimant did not properly report the injury he allegedly sustained on October 8, 2003. Rule N requires, in pertinent part, that "An employee who sustains a personal injury while on duty or on company property or equipment must, before leaving Company premises, report it to his immediate supervisor and complete and sign a written report of the incident using the prescribed form. . . If an employee at any time obtains medical attention or marks off for an on duty injury or occupational illness, he must promptly notify his supervisor. . . ." Claimant's explanation of his actions in this matter are that he did not immediately realize he was injured in the accident, and that he thought he was merely experiencing soreness that he could work through over time. It is clear, however, that as soon as he was removed from service for an apparently unrelated medical reason, the nature of which is not stated in the record, Claimant decided that he was not going to attempt to work through the soreness any

longer. Instead, he sought medical attention for pain in his groin and back that he associated with the collision on October 8, 2003.

The obvious fact that he failed to properly report the alleged injury is not to say that Claimant made false statements about being injured. There was a collision during which he may very well have been injured, and medical records submitted on the Claimant's behalf appear to substantiate his claim of injury. Certainly, there is conflict between his statements to his supervisors that he was not injured at the time of the accident and his subsequent statement in connection with a lawsuit that he was injured as the result of the accident. However, it is not at all uncommon for individuals to experience increasing amounts of discomfort as the result of a collision between pieces of moving equipment, nor is it uncommon for employees to attempt to avoid reporting minor injuries. Therefore, it was not proven that Claimant was dishonest merely because he initially said he was "unscathed" and later said he was injured.

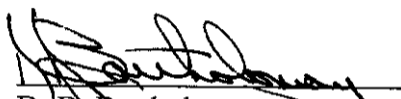
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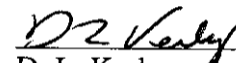
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

In similar cases, this Board has frequently reinstated employees who were found to have violated Carrier's rule for reporting injuries. Dismissal, they have held, was an excessive penalty. Although those awards do not set a precedent that must be followed, they offer sound guidance that will be followed in this case as well. Therefore, considering all of the facts and circumstances of this case, including Claimant's twenty-six years of service, this claim will be sustained to the extent that Claimant shall be reinstated to service with seniority unimpaired, but without compensation for time held out of service.

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make this award effective within thirty (30) days following the date it is signed by two members of the Board.


Mark D. Selbert


D. D. Bartholomay
Organization Member


D. L. Kerby
Carrier Member

Issued at Saint Augustine, Florida on December 23, 2004