

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 186

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of Claimant Alfonso Gonzalez for the alleged violation of Safety and General Conduct Rule N in that on July 15, 2009, you reported to TS-26 Supervisor Myers that you incurred a personal injury while at work on July 14, 2009 and with making false and conflicting statements concerning the July 15, 2009, report of the alleged on-duty injury', was based on un-proven charges and was arbitrary, capricious and in violation of the Agreement (Carrier's File MW-FTW-09-35-SG-342).
2. As a consequence of the unjust dismissal(s)referenced in Part 1above, Mr. Gonzalez shall be made whole and restored to the service of the Carrier, with pay for all lost time, seniority and vacation unimpaired."

Upon the whole record and all the evidence, after hearing, the Board finds 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 precedent in any other case.

AWARD

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

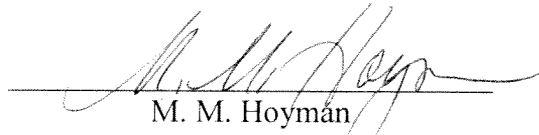
The claimant is charged with both a rule N violation of not timely notifying a direct supervisor of an injury as well as well as a falsification of records charge for attempting to defraud the company by making a false report of injury. On July 14, 2009 at the beginning of the day the Claimant was using a plate hook to pick up plates and throw them to the side for later pickup. Later that morning he was told to remove ballast

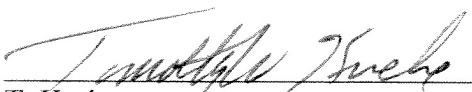
along with two other men, which involved a raking motion with an inverted shovel. He stayed on that assignment for a short time. There are some slight discrepancies in the record regarding whether he was lifting rock, versus raking rocks and regarding the precise length of time the men were on the second assignment. Later, he returned to throwing plates. The claimant did not mention an injury that day. However, according to the record (Transcript, page 97) he did feel pain that day. The next day he reported to work and after attending the safety meeting, told Supervisor Myers that he had injured his back the day before. The supervisor drove him to a medical facility and en route the grievant filled out Form 22.

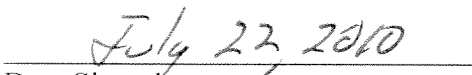
The Board finds Rule N clearly requires that employees must report an on the job injury before leaving the property on the day of the injury. It is undisputed that the grievant did not file a Form 22 in compliance with Rule N on the day of the alleged injury. Thus, we find that there was substantial evidence that there was a Rule N violation. The record also established that the claimant should have been aware of the Rule N inasmuch as he had filed a prior injury report 9 months prior to this incident and also two additional reports in the preceding six years. However, the Board does not find anything in the record that proves any intent to defraud or falsify any document.

Although failing to report an injury is a serious act, the Board finds that in this instance it does not merit dismissal. Consequently, the Carrier shall reinstate claimant to service with seniority and benefits unimpaired but without compensation for time held out of service

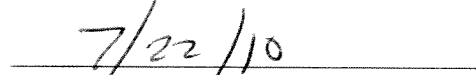
The claim is sustained in accordance with the findings. Carrier is directed to make this award effective within thirty days following the date two members of this Board affix their signatures thereto.


M. M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


Date Signed


D.L. Kerby
Carrier Member


Date Signed

Issued at Chicago, Illinois on May 28, 2010.