

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 187

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of M. W. Holder requesting that he be made whole and returned to service with pay for all time lost with seniority, qualifications, vacation unimpaired as a result of his dismissal from service following a formal investigation on January 22, 2008, concerning his failure to properly and timely report an alleged on-duty injury while working on June 5, 2007, and conduct unbecoming an employee for making false statements concerning a matter under investigation in alleging that he reported an on-duty injury to his foreman on June 6, 2007.

(Carrier File MW-GNVL-07-13-BB-248)

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.

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 record reflects that on Tuesday, June 5, 2007, Claimant, who was regularly assigned to the Greensboro, North Carolina B & B Gang, was assigned to assist the Danville, Virginia B & B Gang installing a bridge deck. Claimant was using an anchor wrench to snap rail anchors in place. He was working with B & B Mechanic A. L. Casstevens when, Claimant contends, he injured his shoulder. Mr. Casstevens testified that at one point while he and Claimant were working together, "I went down with the wrench and he said . . . he made a comment like: 'God, Alfred, you about killed me with that one.' He said: 'You lifted me plumb off the ground.' But we kept on working the rest of that day." B & B Apprentice D. L. Jarrell testified that he observed Claimant "walking around moving his arm in a rotation, kind of like, you know, he had some discomfort," on June 5.

Mr. Casstevens and Mr. Jarrell each testified that later in the day on June 5, Claimant came to the room that they were sharing and showed them what Claimant claimed was a knot near his collarbone which Claimant maintained resulted from the use of the anchor wrench. Mr. Casstevens testified that Claimant alleged that Mr. Casstevens was responsible for the injury.

Claimant testified that on June 5, he "went down grabbing my collarbone," and was unable to continue using the anchor wrench. He did not report the injury on June 5 because he wanted to see if he would be all right. However, Claimant testified that when he returned to his room, he was in considerable pain.

Claimant testified that he reported the injury the next day to Danville B & B Foreman G. W. Dalton. Mr. Dalton testified that Claimant did not report the injury to him until Thursday, June 7. Both testified that Mr. Dalton got angry with Claimant for waiting to report the injury and both testified that Mr. Dalton alluded to whether to report the injury to the Supervisor. The injury was not reported to the Supervisor at that time. It was reported to a Carrier officer on Monday, June 11 after Claimant returned to Greensboro. It is clear from the record that the Foreman did not react properly to Claimant's report and that the Foreman should have reported the injury to the Supervisor as soon as Claimant reported it to him.

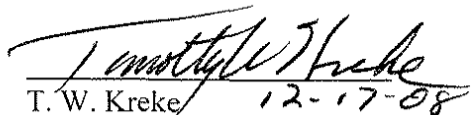
Rule N requires employees to report all on-duty personal injuries to their immediate supervisors "before leaving Company premises." There is no question that Claimant realized he was injured and failed to report the injury prior to leaving the premises on June 5. Carrier clearly proved the charge of violating Rule N by substantial evidence. Employees are not allowed to determine when their injuries are sufficiently serious to report. Carrier properly requires employees to report all on-duty injuries as soon as possible. Such a requirement enables Carrier to refer the injured employee for medical attention where warranted and to immediately investigate the conditions that led to the injury to assure the safety of all employees.

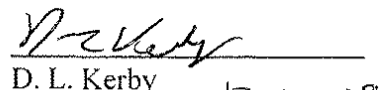
The charge of making false and conflicting statements referred to Claimant's statement when he reported the injury in Greensboro on June 11 that he had previously reported it to the Danville Foreman on June 6, when in fact he reported it on June 7. Although Claimant testified to reporting the injury on June 6, the Foreman testified that the report was made on June 7 and several employees corroborated the Foreman's testimony in this regard. We defer to the decision made on the property to credit the Foreman's testimony over Claimant's and conclude that Carrier proved that Claimant's statement that he reported the injury of June 6 was not accurate.

However, we are unable to find substantial evidence that Claimant intentionally lied about the date he first reported the injury. Indeed, the difference between a claim of reporting on June 6 and a claim of reporting on June 7 is simply not material. Under either version, Claimant violated Rule N. Furthermore, there was no allegation that the claim of an on-duty injury itself was falsified. People often become confused and in good faith mix up their dates.

Claimant's violation of Rule N is not to be taken lightly. However, considering the absence of any allegation that Claimant falsified the injury report itself and the absence of substantial evidence that Claimant intentionally lied about the date he reported the injury to the Foreman, we conclude that the penalty of dismissal was excessive. We award that Carrier reinstate Claimant to service but without compensation for time out of service.


M. H. Malin
Chairman and Neutral Member


T. W. Kreke 12-17-08
Organization Member


D. L. Kerby 12-17-08
Carrier Member