

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 167
Case No. 254

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

- "1. Carrier violated the effective Agreement when Mr. Curlee Bowers was unjustly dismissed by letter dated June 30, 1980.
2. Claimant Bowers shall now be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired; and his record be cleared of this charge."

FINDINGS

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

The record indicates that on June 20, 1980 Claimant allegedly strained his lower back while dragging cross ties from the pile to the track in the North Little Rock Yard. The record indicates further, without contradiction, that Claimant had not reported this injury on the day it was incurred as was required by Carrier's rules. The injury was reported on June 24, 1980 when Claimant was taken to a doctor for examination. The letter of termination, dated June 30, 1980, was sent to Claimant by certified mail and was undelivered and returned to Carrier. Subsequently, approximately three weeks later, Claimant found out that he had been terminated and he promptly filed a request for a hearing. That request was denied as being beyond the time limits provided for in the Agreement.

Carrier argues that Claimant's request for a hearing was untimely. Further, Carrier points out that the letter of termination was addressed to Claimant at his usual resi-

dence and was clearly the correct address since he received letters following that date at the same address. In addition, Carrier argues that Claimant's infraction was serious and warranted major discipline since he broke an important Carrier rule in not reporting the work incurred injury. Carrier also argues that Claimant never communicated with Carrier following the alleged injury and simply did not report for work. Carrier relies in part in its determination on Third Division NRAB Award No. 19298 which provided in pertinent part as follows:

"Prompt reporting of injuries is necessary and extremely important. It is set forth in the rules and it is a reasonable requirement. In the matter at hand, the time elapsed before reporting was twelve days. We think that this is far in excess of a reasonable time....

It is of the greatest importance for the Employer to know of any injury, whether real, suspected, or imaginary that has happened to any of its employees while on duty. An employee may not invoke his own judgment of what constitutes a reportable injury. He must report all of them, according to the rules, whether real, suspected or imaginary."

In that Award, Carrier notes, that a discharge was sustained by the Board.

Petitioner based its position on Carrier's refusal to honor Claimant's request for an investigation. It is urged that this refusal was in error since Claimant never received the termination notice; further, as soon as he heard of Carrier's action, Claimant filed his request for an investigation. In the absence of an investigation, the Organization maintains it was unable to mount a defense in behalf of Claimant.

The record is devoid of an explanation of why the termination notice was not received by Claimant. Contrary to Carrier's position, there is no presumption that the U.S. Mails are infallible. The basic fact remains that the letter was returned to Carrier as undelivered. Based on that circumstance, Carrier was clearly in error in refusing the right of an investigation to Claimant.

As is frequently the case, there is considerable ambiguity in this situation. No explanation is given for the fact that Claimant did not communicate with Carrier after

reporting the injury. Nor is there any evidence of if and when he completed the required medical report with respect to the injury. In addition, there is no indication of whether Claimant is physically able to return to service. Under all the circumstances indicated above, the Board concludes that Carrier violated the rules when it refused to grant Claimant an investigation. Hence, he will be offered reinstatement to his former position, subject to passing a return to work medical examination, with all rights unimpaired. The Board also concludes that Claimant must be disciplined for his failure to abide by Carrier's rules. Therefore, in addition to reinstatement, the Board finds that under all the circumstances he should be compensated for two months loss of pay, the remainder of his loss of compensation should be considered to be a disciplinary suspension.

AWARD

1. Claim is sustained in part;
2. Claimant will be reinstated with seniority and all rights unimpaired to his former position subject to a return to work physical examination.
3. Claimant will receive two months pay as compensation for part of the loss of pay during his time off; the remainder will constitute a disciplinary lay-off.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



C.B. Goyne, Carrier Member



M.A. Christie, Employee Member

Houston, Texas
December 30, 1981