

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 593

Docket No. 593

U.P. File No. 920441

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Union Pacific Railroad Company
(Former Missouri Pacific)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when J. L. Conley (SSN 499-66-2493) was dismissed from service on May 1, 1992 for falsifying an injury report.

(2) Claim in behalf of Mr. Conley for wage loss suffered beginning May 1, 1992, until reinstated with seniority, vacation and all other rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

The Claimant, Machine Operator Helper J. L. Conley, was notified to attend three separate investigations covering several incidents on the charges of:

"(1) Allegedly falsified an on duty, off company property vehicle accident, in which you allegedly sustained a personal injury;

(2) That while working as a Machine Operator Helper, on Gang 9162, in the vicinity of Maumelle, Arkansas, you falsified an on duty, off company property vehicle accident, in which you sustained a personal injury;

(3) and (4) for being absent without authority; and for tampering with a urine specimen."

As a result of the hearing, the Carrier concluded culpability and the Claimant was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12. The record reflects as to the charge concerning the falsification of an injury report to be in support of the Carrier's conclusion of culpability. Carrier concluded the conflict in testimony against the Claimant.


As to the case involving being absent without authority the Claimant admitted that he was in jail on the dates in question and that he had no authority to be absent therefor.


The third case involved tampering with an urine specimen which, in essence, is choosing to refuse to give a urine sample. The collector's experience reflects that she has accomplished some 2,400 tests. Not one of such tests encountered a temperature of not registering on the strip and the specimen being cold to touch. Carrier's conclusion is supported by the fact that the Claimant gave the second specimen within an hour and ten minutes later the cretein level was 156 mg. In the opinion of the Carrier's expert witness, this low level of cretein could be caused by something used to dilute the urine. Hence, lending support to the Carrier's conclusion.


The discipline is not unreasonable. The claim will be denied. In reality it is a moot issue as discipline was upheld in case 594.

The essential facts in Case No. 1 are that Claimant on February 27, 1992 was instructed to use his personal vehicle to drive to take his yearly Engineering Services physical examination. On his return therefrom, the Claimant alleged that he was involved in an automobile accident in which he was injured. The Carrier had taken him for medical treatment. The doctor found nothing wrong with the Claimant. The observations of the Carrier supervisors differed with what the employee asserted. Those observations differed so strongly from the Claimant's version of the facts that guilt is presumed therefrom. There was no physical corroboration of the accident. Incidentally, the site of Claimant's version to the Carrier officers differs from that given to fellow employees. Photographs that the Carrier introduced of course differed from the Claimant's version of where, when and how the accident occurred. Like the oft quoted expression "a picture is worth a thousand words," they operated against the Claimant's testimony. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


Kathy Alexander, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member