

The Fourth Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(The American Railway & Airway Supervisors Association/
(A Division of TCU

PARTIES TO DISPUTE:

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(Union Pacific Railroad Company

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 17 when they assessed the discipline of Dismissal to Mr. K. W. Russell following a hearing held October 4, 1990. Said discipline being unjust, unwarranted and an abuse of Carrier's discretion.
2. Because of this violative action, Carrier be required to return Mr. Russell to his position as Foreman, compensate him for all lost wages and benefits and clear his record of all reference to the charges.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was dismissed from service effective October 13, 1990, for falsification of a personal injury report. The record shows Claimant filed a report on August 30, 1990, in which he claimed he bumped his knee on the side on an engine on November 21, 1989. According to the report, Claimant suffered a blood clot below the skin and a Baker's cyst. The following July, Claimant had surgery on his knee.

Testimony by the manager on Claimant's shift indicates Claimant was limping prior to the start of the shift. He further stated Claimant had told him his leg had started swelling earlier in the day and denied that it was work related. Claimant received treatment at the hospital during the shift which began on November 21, 1989. Upon admission to the hospital, the hospital records indicate Claimant reported he first experienced pain on Sunday, which was November 19, 1989.

Although Claimant offered testimony contradictory to Carrier's witnesses, we do not find Carrier acted unreasonably in concluding he falsified the injury report. The Board finds there is substantial evidence in the record to support the charge against Claimant.

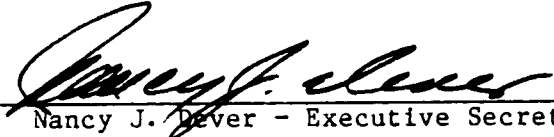
Turning to the appropriateness of the discipline imposed, the Board notes Claimant had been dismissed by Carrier on two previous occasions. He had also recently received a thirty day deferred suspension for being absent from duty without proper authority and falsification of a daily time report. Given Claimant's prior record, and the fact this case also involves the issue of falsification of records, we cannot find Claimant's dismissal to be either arbitrary or excessive. Accordingly, we will not disturb the Carrier's action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1992.