

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

AWARD

Case No. 164

Claimant P. J. Hudak

STATEMENT OF CLAIM:

“Claim on behalf of Electrician P. J. Hudak to be returned to service and to be made whole for all losses, to include, but limited to lost wages, vacation rights, health and welfare benefits, insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance and any other benefits that would have been earned by Claimant during the time he was unjustly withheld from Carrier’s service.”

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

In this dispute the Organization challenges Carrier’s action in dismissing Claimant Hudak from service on September 28, 2016. That determination followed its formal investigation held on August 30, 2016, where Claimant appeared and testified, accompanied by his duly authorized IBEW representatives. After claim handling on the property was not successful in resolving the issue, the Organization advanced its claim to this Board for final and binding disposition.

The record before the Board indicates that Claimant was initially hired as a student Carman at Conway, PA, later transferring to Carrier’s Locomotive Shop at Conway in July 2000 where he commenced work as a Student Electrician. The facts underlying Carrier’s decision to terminate him reveal a discouraging pattern of misinformation, failure to provide required notifications and deceptive behavior by Claimant over an unusually long period of time. In the face of those factors, the claim must be denied.

No useful purpose is seen in serving up in detail the very substantial proof Carrier offers in support of its dismissal in this instance. The salient facts relating to that discouraging behavior are largely undisputed. According to the transcript taken at the formal investigation on August 30, Carrier officials at the Conway Locomotive Shop learned on July 26, 2016 through papers served in a lawsuit filed by Claimant that he was asserting an on-duty neck injury reportedly incurred in July 2013. Having received no prior notification of any such injury, upon Claimant's return from vacation on July 31, 2016, Senior General Foreman Bruce Lee spoke with Claimant at 6:30 a.m. Claimant confirmed his injury claim and represented that he had reported it at the time to Mechanical Supervisor Greg Kerstetter. Upon checking with Kerstetter by phone, Lee was advised that Kerstetter had no recollection of receiving any such report from Claimant, with Kerstetter subsequently confirming that response by email. Later that day, Lee followed up again with Mr. Kerstetter describing the specifics of the accident alleged to have caused the injury in July 2013. Kerstetter again responded, reiterating that he had no memory of any such accident, conversation or report related to it.

Senior General Foreman Nathan Logsdon was present during Lee's questioning of Claimant in the visitor's office. Logsdon's written statement detailing the exchange is in evidence. According to both Lee and Logsdon, Claimant stated that he had been in the process of doing a cab signal relay test on the side of a locomotive at the Mingo Junction hump. After completing the test on the west end of the unit he was in the process of placing the test loop under the east end when ground man Charlie Browning and operator Manny Gargianas coupled an engine into the unit Claimant was working on, notwithstanding his blue flag protection. Hudak stated that he was "forced into the mother, banging his head into the pilot plate." Hudak says he sought out Mr. Kerstetter to determine why his unit had been coupled into, but conceded that he did not report being injured to Kerstetter. Hudak spoke with Browning later that day and a written statement from Browning was secured. Browning represented that no blue flag protection had been installed when the coupling was made, further that he had not spoken with Kerstetter about the matter at the time and was unaware any injury had been reported.¹ In similar fashion, laborer Gagianas

¹ Browning additionally says that Claimant stated to him in the winter of 2015 that "he was pursuing the incident."

provided a written statement indicating he had no recollection of the incident. A review of all Carrier records from July and August 2013, revealed only one signature by Claimant on a cab signal form, and it related to completion of cab signal work on August 6, 2013.

According to Claimant, he had consulted with a Dr. Baghai in October 2013 because of neck pains, attributing his pain to the coupling incident back in July 2013. A cervical MRI was performed. Carrier's Medical Department called out to Carrier on August 25, 2016 the internal disparities in Claimant's reports to various service providers. It noted, for example, that although Claimant was attributing his pain to an injury in July, 2013 when he "bang[ed] his head into the pilot plate," medical records received from other physicians included reports in 2014 reflecting no reference to any claimed injury and "without a precipitating event," suggesting "possible intentional falsification."

It is painfully apparent from this record that Claimant in all likelihood falsified relevant facts in his narrative to supervision in July, 2016 upon being first questioned when they learned of his alleged injury through his lawsuit. Indeed, the record indicates that Claimant testified under oath at his formal investigation that he had a long history of neck pain dating back to June 2012, one year prior to the coupling incident to which he now attributes his neck pain. The record conclusively establishes as well that at no time on or around July, 2013 did Claimant ever report to his employer either the alleged injury, violating Section [3] of General Safety Rule 912, or the fact that he had undergone medical treatment in 2014 for what was later represented to be pain related to a job injury. Rather, he waited 3 years to notify Carrier, and then did so only through the commencement of civil litigation against his employer.

Claimant had a clear-cut obligation to report his injury concurrent with sensing pain, not after consulting with outside medical practitioner unbeknown to his supervisors, receiving a medical diagnosis and undergoing a cervical MRI for neck pain in October 2013 and a cervical laminectomy and occipital rhizotomy in June 2014 deemed necessary as a result of the unreported injury. Carrier's governing rules mandate that employees immediately report injuries to supervision. Claimant failed to do so. Its rules require employees obtaining medical treatment for any on-duty injury or illness to promptly report such activity to a supervisor. Claimant failed to do so. Carrier's rules direct employees to


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be honest and forthright in dealing with their employer. Claimant was not. The claim will be accordingly denied.

A W A R D

The Claim is denied.


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Carr
Carrier Member

Dated: February--, 2018