

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	<u>AWARD</u>
ELECTRICAL WORKERS	)	
	)	Case No. 177
-and-	)	
	)	Claimant R. L. Jones
NORFOLK SOUTHERN RAILWAY	)	
COMPANY	)	

STATEMENT OF CLAIM:

“Claim on behalf of Electrician R. L. Jones in Norfolk, Virginia for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and 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 dismissed from service with the Carrier following a formal investigation for pulling the Panamax Vessel Golden Gemini offshore starboard (mooring) line back onto the pier by himself in violation of Senior General Foreman SGFB002 at approximately 7:30 a.m. on March 21, 2017; for conduct unbecoming an employee for making false and/or conflicting statements with respect to matters concerning your statements on your personal injury report and what and how you performed your work when questioned on March 21, 2017.”

FINDINGS:

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.

Following formal investigation held on September 27, 2017, by letter dated October 26, 2017, Claimant Jones was dismissed from service after Carrier determined that its charges of March 30, 2017, against him had been proved. Specifically, as noted in the Statement of Claim, Carrier had charged Claimant with performance deficiencies while

line tending on March 21, 2017, and conduct unbecoming an employee for subsequently making false or misleading statements with respect to matters under investigation.

The substantial underlying record before the Board is thickset with factual detail. Carrier's Bulletin-SGFB 002 sets out proper procedures on retrieving mooring lines manually, prohibiting pulling lines without assistance. On the date of the event triggering discipline, Claimant was securing mooring lines while working as a Car Dumper Operator at Lambert's Point, Norfolk, VA. Claimant's co-workers, Operators Perry and Brown, secured the forward spring line on a vessel and were then joined by Claimant. Claimant did not perform any work during the securing of the port lines, but thereafter joined in and helped with securing the two starboard bow lines, the inshore line tied to the heaving line and the offshore line tied about ten feet behind it, both attached to the heaving line with tag lines. The record indicates that in the course of winching the inshore line into position with the linetending machine and untying the heaving line on the inshore line while Jones and Perry secured the offshore line, Claimant sustained a back injury.

Claimant's written statement relative to the injury represented that while securing mooring lines the heaving line slipped through the linetending machine, dropping the second line into the water. "The lines were staggered about 10 ft. apart and as the first one came up it came untied and dropped on the feeder system." According to Claimant, as he was pulling the line back onto the pier he saw it slip and he and Perry pulled the line up together, with Perry behind him. Although he felt a sharp pain in his lower back, he finished his shift, but as the pain grew worse he reported the injury and sought medical treatment.

Carrier's charges address alleged false or conflicting statements regarding the injury implicating Claimant's initial narrative in his Personal Injury Report and subsequently in the course of Carrier's investigation with respect to matters under investigation. Briefly summarized, at approximately 1:25 p.m. on March 21 he represented to Senior General Foreman Thomas that he had "...only handled two lines...they were already securing the port bow lines when I arrived, and I only helped with the starboard lines." However, at

approximately 3:47 p.m. that day he represented to a Carrier official that “I pulled it (the offshore starboard mooring line) up by myself.” Statements made on his Personal Injury Report dated March 21 indicated that, “...the heaving line slipped through the jaws of the linetending machine causing the second line to drop back in the water.” There were inconsistencies however, including with respect to which if any line Claimant ever saw fall and slip back into the water and Operator Perry’s denial of having ever assisted him. At 8:43 p.m. on that date, for example, Claimant told Thomas that, “I actually handled four lines.” (Claimant’s Form 22 indicated the he and Perry had pulled the mooring line back onto the pier, conflicting with his telephonic report to to Charging Officer Thomas that he had pulled the lines by himself.)

The record reflects additional discrepancies as well, all related to the particulars of the line handling on March 21. Thus, it is clear from this record that Claimant did indeed make multiple inconsistent statements with reference to exactly how his injury occurred, as Carrier asserts. At the same time, the Organization’s contentions with respect to Claimant’s mental condition during the relatively brief timespan here force themselves on the Board’s attention. Although there is no proof offered in support of the suggestion that he may have been impaired by medications prescribed for his injury, Claimant himself attributed his inability to remember critical detail as possible a function of having “a senior moment.” Simple confusion, not drugs, may have been in play as well, with Claimant suggesting he assumed Perry had helped him pull a line up because Perry was positioned behind him.

Accordingly, while it is indisputable that employee dishonesty in this context is normally just cause for termination, reasonable doubt has been demonstrated with respect to whether false or inconsistent statements made in this instance represented a deliberate and purposeful attempt to mislead. Claimant is shown to be both a long-service employee, having accomplished 37 years of service reflecting no previous dishonesty; and a significant history of medical issues that may have played a role in his confusion.


**OPINION AND AWARD**

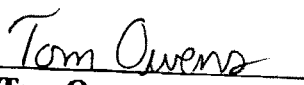
**Public Law Board No. 5332 – Case No. 177**

Given the mitigating circumstances presented, the Board finds that both side's best interests are served with a response less severe than permanent dismissal. Carrier is directed to offer Claimant reinstatement to his prior position without back pay or benefits, but with seniority intact, conditioned upon, (i) execution of a Last Chance Agreement and, (ii) satisfaction of Carrier's established medical requirements for restoration to service.

**A W A R D**

The Claim is partially sustained in accordance with the foregoing Opinion.

  
James E. Conway  
Chairman and Neutral Member

  
Tom Owens  
Employee Member

  
Tara Arnett  
Carrier Member

Dated: January , 2020