

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:)
)

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS)
)

-and-)
)

NORFOLK SOUTHERN RAILWAY)
COMPANY)
)

AWARD

Case No. 162

Claimant L. B. Foor

STATEMENT OF CLAIM:

“Claim on behalf of Electrician L. B. Foor to be returned to service and to be made whole for all losses, to include but not 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 dismissed from service with the Carrier following an investigation for the following charges:

1. Your failure to properly and timely report an on-duty injury to your abdomen (umbilical hernia) which you allegedly incurred while in the process of pulling traction motor cable on March 26, 2014, while assigned as an electrician on the first shift (7:00 AM – 3:00 PM) at Juniata Locomotive Shop, Altoona, Pennsylvania, in violation of General Rule N (now Section [3] of General Safety Rule 912) of the Norfolk Southern Book of Safety and General Conduct Rules.
2. Your failure to promptly notify your supervisor that you had obtained medical attention for an on-duty injury to your abdomen Which you allegedly incurred while in the process of pulling traction motor cable on March 26, 2014, while assigned as an electrician on the first shift (7:00 AM – 3:00 PM) at Juniata Locomotive Shop Altoona, Pennsylvania, in violation of General Rule N [now section [5] of General Safety Rule 912) of the Norfolk Southern Book of Safety and General Conduct Rules.

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.

According to the record before us, Carrier dismissed 11-year Juniata Locomotive Shop Electrician Foor on August 3, 2016, after review of the evidence adduced at a formal investigation held on July 7, 2016. Carrier's action was predicated on its determination that Claimant had failed to timely report to it either a hernia he represented he incurred while on duty or the medical attention sought in that connection as required by applicable NS rules. For the reasons that follow, the Board will partially sustain the claim.

The circumstances attending Claimant's lawsuit against Carrier related to this and another injury to Claimant's shoulder are discussed at greater length in companion Case No. 161, decided concurrently by this Board.¹ By way of brief background, in the underlying records in both disputes Carrier established that it received first notice of both the shoulder and hernia injuries by way of a civil suit commenced by Claimant in May 2016. Carrier contends that the assertions in the lawsuit brought to its attention for the first time Claimant's contention that he had incurred a hernia at work in March 2014 for which he had subsequently undergone surgical repair. According to Carrier, however, the undisputed evidence received at Claimant's formal investigation on July 7, 2016, including Claimant's own admissions, established that he had reported neither the occurrence of the injury nor the ensuing surgery to his employer as required by well-known and prominently published Carrier rules.

The Organization protests Carrier's dismissal action in this instance on procedural grounds. The transcript of the July 7, 2016 formal investigation, it maintains, demonstrated confusion on Carrier's part with respect to what were, in fact, two separate hernia injuries. The first was incurred by Claimant on March 24, 2014. Claimant put Carrier on notice of that matter on May 26, 2016.

Pursuant to Agreement Rule 29 – Discipline, “[a]n employee...shall be notified...within a reasonable period of time, but not to exceed ten (10) days of the occurrence...” Due to a mild muddle reflected in the formal hearing transcript, however, in the run-up to this dismissal action Claimant was not charged until June 6, 2016. Indisputably, Carrier notified the Claimant in writing in this instance beyond 10 days of its first knowledge of the triggering incident. On that basis, Carrier's dismissal action will be vacated and expunged

¹ That Award sustained Carrier's dismissal action for the underlying rule violations.

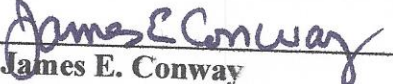
OPINION AND AWARD

Public Law Board No. 5332 – Case No. 162

from Claimant's service records. In light of the concurrent dismissal on independent grounds, the petition for restoration to service with a make whole remedy are declined.

A W A R D

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


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Carr
Carrier Member

Dated: February--, 2018