

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13863
Docket No. 13748
05-2-04-2-26

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Ronald Ramsdell

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern and Santa Fe Railroad (sic) Company maliciously and knowingly manipulated Ronald J. Ramsdell’s investigation concerning an injury report on July 7, 2003 at the West Burlington Shops. This includes violating Rule 35, Section I, from the Agreement Book for International Brotherhood of Electrical Workers, effective April 1, 1983, in that the documentation of the original investigation notice was changed after the 20 day’s allowed.

That the Carrier also violated Rule 35, Section C in that the witnesses and material that had been requested, but had not been produced, contacted, or ever attempted to be provided.

Accordingly, Rule 41, Personal Injuries; states employees injured while at work will be required to make a written report of the circumstances of the accident just as soon as they are able to do so after receiving medical attention. This was done so.

Also fellow employees Mr. Frank Cooper, Mr. Michael Graham, and Mr. Mark Leffler all having investigations with almost identical circumstances were given judgments of no disciplinary actions taken or dropped altogether. I ask for the same treatment Fellow worker Ms. Jessie Stout having like circumstances was coerced into changing her injury report to a cumulative trauma report or be threatened with a formal investigation.

The investigation notice stated "his alleged use of defective equipment" no such statement was made.

Page 8, Section D, in the Agreement book for IBEW Workers, Called and not Used. Employees called or required to report for service and reporting but not used, will be paid a minimum of four (4) hrs. at straight time rate. With showing up for the scheduled investigation and then told it was cancelled I am requesting pay for myself and Mr. Frank Cooper.

2. Accordingly, the Burlington Northern and Santa Fe Railroad (sic) Company be ordered to either comply with the original notice and mutually agreed up date which I was at attendance or drop the proceedings collectively.
3. That the Burlington Northern Santa Fe Railroad (sic) Company be ordered to reverse it's (sic) disciplinary judgment, remove all records of the investigation from my files, and compensate myself and Mr. Frank Cooper four (4) hrs. pay straight time, for call and report, but not worked."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

As background, the Claimant filed an Employee Personal Injury/Occupational Illness report on July 23, 2003. A reading by the Board of that report indicates that the date of the injury, an "intense pain of left shoulder" was July 9, 2002. The Carrier notified the Claimant to attend an investigation to determine responsibility, if any for untimely report of an injury and alleged use of defective tools. Following postponements, the investigation was held in absentia on September 30, 2003. The Carrier found the Claimant guilty as charged and issued a thirty day record suspension.

We have reviewed the Claimant's many issues. The Claimant was present on September 10, 2003 and alleges the Carrier failed to properly postpone the investigation. The Claimant also alleges, among other disputes that the Carrier failed to abide by the Agreement, call witnesses, equally discipline employees and properly pay for attendance.

The Board is required to review procedural issues before we may consider the merits of claims. In this instance, the final declination on property by the Carrier was December 11, 2003. The Claim was filed with this Board on October 9, 2004 which was not within the nine months required.

As the Claimant did not fulfill the timely appeal requirements the Claim is not properly before this Board.

However, the Board has carefully considered the case on the merits as well. We find the Claimant's procedural complaints to be without merit. The postponement did not violate the Agreement. The record shows without contradiction that Claimant delayed several days in reporting the injury. Although the offense is serious and almost always justifies actual suspension or dismissal. Carrier limited the penalty to record discipline. The Carrier acted reasonably.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 27th day of July 2005.