

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36768
Docket No. SG-37025
03-3-01-3-668

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co:

Claim on behalf of D. K. Beelman, for payment of all time lost as a result of his suspension from service starting September 12, 2000, and for any reference to this matter to be removed from his record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him without meeting the burden of proving the charges. Carrier's File No. 35 01 0005. General Chairman's File No. 01-006-BNSF-103-C. BRS File Case No. 11870-BN.”

FINDINGS:

The Third 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.

At the time of the incident that gave rise to this case, Claimant D. K. Beelman was employed as a Signal Electronic Technician working out of Galesburg, Illinois. The record reveals that the Claimant strained his back while moving an extension ladder on July 27, 2000. The record also indicates (in the Employee Personal Injury Form) that the Claimant was treated by a doctor on July 28, 2000. The form states that the doctor prescribed a back brace, ice, and crutches. The Claimant missed work between August 1 and 4 and on August 7, he called the Carrier and indicated that he wanted to submit an on-duty injury report. The Claimant spoke with a Supervisor. The form was filled out and dated August 7, 2000. On August 9, 2000, the Claimant was advised as follows:

“Arrange to be present in the Superintendent's conference room, 1670 S. Henderson, Galesburg, IL, 61401, 10:00 AM, Friday, August 18, 2000, for formal investigation for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to immediately report an on duty, on company property injury to your back, that you reported as occurring on Thursday, July 27, 2000 at 2:00 PM, at approximately MP 35 on the Barstow Subdivision, subsequently reported on report of injury Form SAF51662, completed and signed by you on August 7, 2000, while assigned as Signal Electronic Technician at Galesburg, IL.

Arrange for representation and/or witnesses in accordance with governing provisions of prevailing schedule rules.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter and return to this office.

Rule 1.2.5: Reporting

1.2.5 Reporting:

All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. The injured employee must also complete the prescribed written form before returning to service.”

The Investigation was held as scheduled on August 18, 2000. As a result of the Investigation, it was concluded that the Claimant had failed to report the July 27, 2000 injury in a timely manner in accordance with Rule 1.2.5, Reporting. As a result of this Rule violation, the Claimant was assessed a Level S record suspension of 20 days.

The Organization presented three major arguments in this instance.

- 1. The Hearing was not impartial. The Investigation Officer, Mr. Lehman, acted as the Carrier representative at all levels of the grievance process, from investigating to assessing the penalty. That situation is not conducive to a fair and impartial Hearing, as required by Agreement.**
- 2. While the injury may have been reported late, it took some time for the impact of the injury to be considered serious by the Claimant.**
- 3. A Level S 20-day Suspension is far more severe than is justified.**

The Claimant admitted that he failed to report the injury in a timely manner, but said that he did not want to spoil the Carrier's safety record. The Carrier did not accept this as a legitimate position.

The Board reviewed all of the facts of this case and has concluded that the Claimant received a full and fair Hearing and that he was guilty of not properly reporting the July 27, 2000 injury. The Board has also concluded that the penalty assessed by the Carrier is in line with penalty assessments for similar violations across the industry. It cannot be construed by the Board to be arbitrary or capricious; consequently, the Board has no authority to modify it.

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 Third Division**

Dated at Chicago, Illinois, this 29th day of December 2003.