

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36766
Docket No. SG-36692
03-3-01-3-237

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
((former Atchison, Topeka & Santa Fe Railway)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of D. D. Henderson for payment all lost wages plus skill pay and removal of any reference to this matter from the Claimant's personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when it issued a Level S-20 day suspension against the Claimant. Carrier failed to meet the burden of proof and failed to conduct a fair and impartial investigation, in connection with an investigation held on August 20, 1999. Carrier File No. 35 00 0010. General Chairman's File No. BRS 01141. BRS File Case No. 11543-ATSF.”

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 dispute, Claimant D. D. Henderson was working as a Student Signalman on Gang 28213, headquartered at Ft. Sumner, New Mexico. The record reveals that on August 1, 1999, the Claimant submitted a Medical Status Form indicating that the cause of his medical problem was the result of an on-duty injury. The Claimant filed the official "accident report" on August 12, 1999. In this report, the Claimant alleged that he hurt his back while cleaning around switches, moving ballast, and picking ballast. He indicated that the alleged accident took place on July 12, 1999.

On August 13, 1999, the Claimant was issued the following Notice of Investigation:

"August 13, 1999

**Mr. D. D. Henderson
3208 Ross
Clovis, NM 88101**

Mr. Henderson:

Please arrange to report to the Burlington Northern Santa Fe conference room, 1624 First Street NW, Albuquerque, NM 87102 at 10:00 AM, August 19th, 1999, for formal investigation to develop the facts and place responsibility, if any, in connection with possible rules violation, Rules 1.1 - Safety, 1.2 - Personal Injuries and Accidents, and 1.6 - Conduct, of the Burlington Northern Santa Fe Maintenance of Way Operating Rules, concerning your alleged personal injury, on July 12, 1999, while assigned as Student Signalman on Gang 28213, at Ft. Sumner, New Mexico.

You may arrange for representation in line with the provisions of schedule or agreement governing your working conditions, and you may arrange for the appearance of any desired witnesses at your own expense.

Please acknowledge receipt and understanding of this notice by signing the second copy of this letter in the space provided therefore and return to the undersigned.

Respectfully,

**W. F. Dorcey
Manager Signals"**

Rules Pertinent to this Dispute

1.1 Safety:

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

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.

1.6 Conduct:

Employees must not be:

- 1. Careless of safety of themselves or others**
- 2. Negligent**
- 3. Insubordinate**
- 4. Dishonest**
- 5. Immoral**
- 6. Quarrelsome or**
- 7. Discourteous.**

A Hearing in the matter was held on August 20, 1999, in Albuquerque, New Mexico. A transcript of the Hearing has been made a part of the record. As a result of that Hearing, the Carrier found the Claimant guilty of violation of Rules 1.1 - Safety, 1.2 Reporting and 1.6 Conduct. The following letter of discipline was sent to the Claimant on September 27, 1999:

"David D. Henderson
SS# XXX-XX-XXXX
3208 Ross
Clovis, NM 88101

September 27, 1999

This letter will confirm that as a result of the formal investigation held on August 20, 1999 at Albuquerque, New Mexico, concerning late reporting of personal injury that occurred on July 12, 1999 you are issued a Level S suspension of 20 days for violation of rules 1.1, Safety 1.2, and 1.6 Maintenance of Way operating rules. Ten (10) days of the suspension will be deferred for a period of six months. If you are involved in another incident requiring discipline during this period, the deferred suspension will be activated along with any discipline issued for that incident. Additionally, you have been assigned a probation period of 1 year. If you commit another serious rule violation during the tenure of this probation period, you will be subject to dismissal.

Your suspension will commence on September 27, 1999. Any scheduled vacation, leave of absence, medical leave, or furlough during this time will extend your suspension by the corresponding number of days that fall within the suspension period. You will be reinstated to service on October 9, 1999.

This letter will be placed in your personal file. You signing below serves as receipt of this suspension.

Respectfully,

J.W. Williams
Director Signals
Kansas City, Kansas

Signature:
Date: 10-6-99

cc-Jeff Parker-Local Chairman"

On March 29, 2000, the instant claim was filed. The claim was denied at all levels and has been placed before the Board for final resolution.

The Board reviewed the record and studied the transcript of the Hearing. As a result of that review, the Board is compelled to conclude that the Claimant did in fact, violate the three Rules cited in the September 27, 1999 discipline letter. He did not report an on-duty-injury when it occurred on July 12, 1999. He went to the doctor on July 16, 1999 because his back hurt. At least at this point, the Claimant should have reported the July 12 event to his Supervisor. On July 21, in a conversation with his Supervisor, the Claimant mentioned that his back hurt and he had been to the doctor concerning it on July 16, 1999. When asked if he was injured on the job, he answered that he did not know. It is difficult to understand why, if the Claimant had been injured on July 12, he did not know that this was the case and why he did not report the injury at this point.

The Board considered the procedural arguments presented by the Organization. It does not find these arguments sufficiently persuasive to support modification of the discipline assessed. Reporting on a timely basis of on-duty personal injuries is a crucial issue in the railroad industry. While the Organization protested the level of penalty imposed in this case, the Board can find no basis within its authority to modify or reduce 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.