

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36769
Docket No. SG-37028
03-3-01-3-644

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 R. R. Douglas for compensation for all lost time and benefits, including skill pay, and that the discipline be removed from the Claimant's personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 41, when Carrier suspended the Claimant from service without the benefit of a fair and impartial investigation and without meeting the burden of proving the charges against him in connection with an investigation held on May 2, 2000. Carrier also violated Letter of Understanding dated August 25, 1987. Carrier's File No. 35 01 0001. General Chairman's File No. 003954. BRS File Case No. 11804-BNSF.”

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 R. R. Douglas was employed as a Signaller assigned to a gang headquartered at River Banks, California. On April 6, 2000, the Claimant was sent a formal Notice of Investigation. That notice reads, in pertinent part, as follows:

"You are hereby notified to attend formal investigation in the BNSF Training Room, 2650 Tulare Street, Fresno, Ca, at 10:00 am April 18, 2000, concerning report alleging your failure to properly report personal injury which you claimed occurred at Hughson, California, on March 16, 2000; so as to determine facts and place responsibility, if any, involving possible violation of Rules 1.1, 1.2.5, 1.2.7, 1.3.1, 1.6, and 1.13 of the Maintenance of Way Operating Rules, in effect January 31, 1999; and Rule S-1.2.8 of the Maintenance of Way Safety Rules in effect January 31, 1999.

You may arrange for representation in line with the provision of Agreement or Schedule governing your working conditions; and you may likewise arrange for the attendance of any desired witnesses, at your own expense."

The Investigation was held on May 2, 2000. As a result of the Investigation, the Claimant was found guilty of improperly reporting a personal injury incurred by him when he fell down while walking the track operating a measuring device. The Claimant was found guilty of violating numerous Safety Rules, chief among them Rule 1.2.5, Reporting, and S-1-2-8, 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.

S-1-2-8 Reporting

Make reports of incidents immediately to the proper manager."

As a result of these violations, the Claimant was assessed a Level 1, 30-day suspension. Fifteen days of the suspension was to be served and 15 days deferred for six months.

The Board reviewed the record in detail. It studied the arguments presented by both parties on all substantive, as well as procedural issues. As a result of this review, the Board has concluded that the Claimant's actions did not warrant discipline as severe as a 30-day suspension. The Claimant fell down on Thursday, March 16. The fall knocked the wind out of him. He finished the day on Thursday and worked Friday, March 17. On Saturday morning, the Claimant sneezed and felt excessive chest pain. He went to a doctor and discovered that he had fractured ribs. He reported this to his Supervisor on Saturday afternoon, 48 hours after his fall.

The Board has consistently supported the Carrier's authority to assess discipline when employees fail to report on-duty injuries or accidents properly. The Board, however, has not adopted the position that every incident of failing to report an accident immediately is an event that justifies severe discipline. There has been considerable discussion of this point throughout the railroad industry. Management officials recognize that each time employees experience a bump or cut, they cannot be expected to stop work and file an accident report. It is also a common comment from employees that they do not want to report every bump or cut as an accident because of the pressure from Management to maintain an accident-free safety record.

Given the problems with strict enforcement of the Rules governing the reporting of accidents by employees, the Board has concluded that the penalty assessed the Claimant in this instance was far more severe than justified by the

facts. The Board directs that the Claimant's discipline be reduced to a five-day actual suspension. He shall be paid for all lost time and contractual benefits beyond the five days.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

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