

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39872
Docket No. SG-39614
09-3-NRAB-00003-060406
(06-3-406)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

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

Claim on behalf of E. R. Bills, for removal of a Level S 30-day record suspension from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued discipline against the Claimant without meeting the burden of proving the charges against him, and without benefit of a fair and impartial investigation, in connection with an investigation held on April 6, 2005. Carrier’s File No. 35-05-0065. General Chairman’s File No. 05-042-BNSF-173-CA. BRS File Case No. 13567-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.

By notice dated March 10, 2005, the Claimant was instructed to attend an Investigation in connection with the charge that he failed to promptly report an injury that occurred while on duty. The pertinent Rules cited in the Investigation notice were as follows:

“Policy on Injury Handling and Safety Reporting:

In the event of muscular aches and pains that result from ‘routine’ work which do not or did not appear to be serious when they first occurred, employees have 72 hours in which to submit an injury report...or to make a verbal report to their supervisor without concern for being charged with ‘late reporting.’ If the accident/incident requires medical treatment of any kind, a report must be made when that treatment is provided.

Rule 1.1.3 Accidents, Injuries and Defects

Report by the first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident. . . .

Rule 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 effect employee performance of duties must be reported to the proper manager as soon as possible. The

injured employee must also complete the prescribed form before returning to service.

Rule 1.2.7 Furnishing Information

Employees must not withhold information or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations.”

The evidence developed at the Investigation shows that the Claimant was assigned to the position of Assistant Signalman on a construction gang based at Merced, California. He had been employed by the Carrier for approximately 18 months.

On March 2, 2005, the Claimant was pulling track wires from the rail when he felt pain in his right shoulder. The Claimant testified that he stopped using his right arm and waited a few minutes until the pain subsided. He then continued with his assignment and finished out the day. Although a Foreman was nearby, the Claimant admitted that he did not report the injury to the Foreman, nor did he report the matter to any other supervisor.

The Claimant was on vacation for the next several days. Despite having noticeable soreness in his arm the next day, the Claimant took no further action until Monday, March 7, when he went to see his doctor for a previously scheduled appointment. His physician restricted the Claimant from work for at least two weeks. That same day, the Claimant contacted Supervisor K. Walker to report that he injured his shoulder on March 2, 2005.

Following the Investigation, the Carrier determined that the Claimant was guilty of the alleged misconduct. The Claimant was issued a Level S 30-day record suspension. The Organization filed the instant claim protesting the discipline.

The Carrier argues that the Claimant’s course of conduct clearly established that he was in violation of the Rules which require reporting an on-duty injury to supervision within the 72-hour reporting period. The Carrier asserts that the

Claimant knew he had been injured and was required to report the injury. In the Carrier's view, the discipline imposed was lenient in light of the circumstances and should be upheld.

The Organization acknowledges that the Claimant failed to submit an injury report to supervision within 72 hours as required by Carrier Rules. However, the Organization maintains that the Claimant was not aware of this requirement until after the instant charges were leveled against him. The Organization submits that the Carrier bears the burden of proof in this disciplinary case, and it failed to provide any evidence that the Claimant was notified of the pertinent Rules and policies prior to the time he was injured. Further, the Organization asserts that the Carrier did not notify employees about the reporting requirements until two days after the incident, when an e-mail was sent to all supervisors and employees informing them about the reporting policy.

After careful examination of the respective positions of the parties as well as the record of the Investigation, the Board finds that there is substantial evidence to support the charges. The record demonstrates that the Claimant knew he had been injured on March 2, 2005, yet he continued to work that day without notifying supervision that he sustained an injury to his right shoulder. By the Claimant's own admission, he did not report his injury until five days had elapsed. His actions were contrary to Carrier Rules which require the prompt reporting of all personal injuries.

The Claimant testified that he was not familiar with the Rules cited in the Notice of Investigation. The Board is not persuaded by that assertion. The Claimant attended orientation at the time of hire. He was Rules certified on Maintenance of Way Operating Rules. All railroad employees have a duty to know and follow the Rules and policies that govern them. The responsibility to promptly report injuries is one of the most fundamental and important aspects of railroad employment. As the Board stated in Third Division Award 26483:

"All Divisions of this Board have commented many times on the serious nature of failing to report on-duty accidents immediately. Carrier has a right to know when an accident takes place. Failure to

notify Carrier can, in the final analysis, be costly to both Carrier and the injured employee. Maintenance of Way employees are fully aware of the requirement to report an accident immediately.”

The fact that the Carrier issued an e-mail reminder about the injury reporting policy to supervisors and employees after the incident at bar does not change the result. When there has been a breach of the Rules or policies, the Carrier has the right to take action to ensure that the incident does not happen again. The subsequent measures taken here fail to establish that the Claimant was not previously apprised of the Rules and policies.

The final issue concerns the reasonableness of the penalty imposed. As the Awards cited by the Carrier have recognized, discipline up to and including dismissal has been upheld when an employee fails to promptly report an injury. See, e.g., Third Division Award 26483; Public Law Board No. 4104, Award 78. The Claimant’s dereliction of duty is regarded as a very serious offense in an industry where safety is paramount. There is no basis to disturb the discipline. Accordingly, the claim must be denied in its entirety.

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 31st day of July 2009.