

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42615
Docket No. MW-42883
17-3-NRAB-00003-150081**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day record suspension and three (3) year review period] imposed upon Mr. T. Brunner, Jr. by letter dated September 10, 2013 for alleged violation of MOWOR 1.2.5 Reporting and MOWOR 1.2.7 Furnishing Information in connection with charges of alleged ‘...failure to provide all facts surrounding your alleged injury that occurred (sic) on April 16, 2012, working at or near Dewitt, Nebraska Milepost 19.94 on the Beatrice Subdivision. ***’ was without just cause, on the basis of unproven charges, excessive and in violation of the Agreement (System File C-14-D040-1/10-14-0001 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the imposed discipline shall be overturned and the Claimant’s record shall be cleared of the charges leveled against him.”**

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.

The Carrier notes that the Claimant pulled a back muscle while at work on April 16, 2012, but did not report the incident until a week later and filled out the required report the day after that, making the report outside of the 72-hour limit and untimely. Should the claim be sustained, the Claimant is due only the removal of the discipline from his records.

The Organization asserts that because the testimony about what happened was a “net wash” and because the Conducting Officer did not issue the discipline, and therefore did not make the necessary credibility determinations, the investigation was not fair and impartial and the claim should be sustained.

The Organization’s Procedural contentions may be addressed in short order. The parties’ collective bargaining agreement does not include language calling for pre-investigation discovery; thus the Carrier has no obligation to honor the Organization’s discovery request. This has been made clear in numerous on-property awards. The Organization cannot reasonably expect this Board to be persuaded to require discovery on the strength of words from a Presidential Emergency Board report when the record does not include the report itself, which would allow the Board to assess the context from which the words came. And, while the Carrier itself has acknowledged that the better practice is to have the Conducting Officer sign the disciplinary letter, there is no such obligation in the collective bargaining agreement. Therefore, separating the two functions does not create a fatal due process flaw in the Carrier’s case.

MOWOR 1.2.5 Reporting states in part that “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.” MOWOR 1.2.7 Furnishing Information states that “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 Injury Reporting Policy contains a relevant limited exception to the above-noted MOWORs in that reporting of "muscular aches and pains from 'routine' work that do not appear to be serious when they first occur" need not be immediately reported, but must be reported within 72 hours to the appropriate supervisor.

It is undisputed that the Claimant's April 17, 2012 voicemail message for Foreman Fankhauser did not indicate a work-related back injury. The Board has no reason to reject the determination that Manager Swanson testified credibly that when she spoke with the Claimant on April 18, 2012, he did not raise the possibility of work-related back pain. Had the Claimant done so, it stands to reason that Manager Swanson would have responded as she did more than 72 hours later and would have urged the filing of the appropriate report. The Carrier's interest in prompt reporting extends to limiting liability, trying to ensure proper medical treatment and identifying potentially hazardous conditions. These concerns are legitimate and require compliance with the aforementioned MOWORs. Substantial evidence establishes the Claimant's failure to meet his obligation to report his injury in full within 72 hours.

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 27th day of June 2017.