

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45163  
Docket No. MW-47627  
24-3-NRAB-00003-220635**

**The Third Division consisted of the regular members and in addition Referee Jeanne M. Vonhof when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. M. Woody, by letter dated February 25, 2021, for violation of MWOR 1.6 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D070-10/10-21-0137 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Woody shall now be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated in accordance with Rule 40G of the Agreement.”**

**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 Claimant M. Woody had established and held seniority within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, Claimant was assigned as a Sectionman. He had accumulated nearly fourteen (14) years of service with the Carrier.

By letter dated January 25, 2021, the Carrier directed the Claimant to report for a formal investigation into allegations that, on January 18, 2021, the Claimant was dishonest and allegedly falsely reported an injury while working near Mile Post 541.2 on the Brush Subdivision.

Thereafter, by letter dated March 28, 2021, the Organization appealed the Carrier's decision. The claim was subsequently progressed on the property and no accord could be reached. This claim is now before this Board for final adjudication.

The facts are largely not in dispute in this case. The Claimant was injured on the property on January 18, 2021. He was working on a three-member crew to dislodge part of a frog as they were replacing worn rail. The Claimant was pushing down as hard as he could on a long 6-foot needle bar which was wedged under part of the frog, trying to lift it up while another employee, Mr. Jason Snow, hit the other side of it with a sledgehammer. When Mr. Snow hit his section with the sledgehammer, the needle bar popped loose, the action threw the Claimant off-center, and he fell down hard on his shoulder. He immediately got up and walked away, telling his co-workers he was okay. He testified that he was embarrassed. He was also in increasing pain and was concerned because after a few minutes he discovered that he only had limited mobility in his arm.

The Claimant reported the injury immediately to his gang supervisor Jacob Yancy who called Roadmaster Cody Phillips. The Claimant did not describe the way in which he fell accurately to Phillips. Instead, he told him that he had slipped on ballast behind the truck and fell on his shoulder. The Claimant was taken out of service and drove himself to the hospital, where x-rays were taken and it was concluded that his arm was not broken. On January 20 he provided a written statement supporting his initial recounting of the event. Phillips asked the other three men working on the gang with the Claimant whether they had seen him fall on ballast behind the truck that day and they all said no.

The Claimant was noticed by letter January 25, 2021 for an investigation into allegations that he had falsely reported an injury. The following day he completed a second statement describing how he had actually fallen. In his second statement the

Claimant apologized for not telling the truth initially about how he was injured at work. The Claimant's pain and lack of mobility in his arm increased and before the investigation was held on February 4, he had an MRI and received a diagnosis that he needed surgery for tears in four tendons around his rotator cuff and that he would be off work for about 5 months. By letter dated February 25, 2021, the Carrier informed the Claimant that the Carrier concluded that he had violated Maintenance of Way Operating Rule (MWOR) 1.6 Conduct and assessed immediate dismissal.

On this record the Carrier has established by substantial evidence that the Claimant was not initially honest in the details that he provided to Roadmaster Phillips about how his injury occurred. The Carrier may reasonably expect employees to provide accurate details of accidents on the job.

However, in assessing the penalty of dismissal in this case, the Board concludes that there is no evidence that the Carrier considered the mitigating circumstance of the Claimant's medical condition and psychological state at the time he first gave his report. The Claimant reported to Phillips very shortly after being in an accident unlike anything that had ever happened to him at work. The injury was serious enough that he needed major surgery and was scheduled to be off work for about five months beginning immediately after the accident. At the hearing he stated that when he first described how he was injured to the Roadmaster,

"I never had that type of injury before and I was not I just wasn't thinking clearly...I just didn't want to get anyone else involved... I was embarrassed... I was in pain... I had made a poor judgment... I was confused... I had a strange sense that I was maybe trying to ...bring all the responsibility onto me... I didn't want no one else to get involved in it...I was kind of in shock from the -- that I had that ...injury done to me. I've never had an injury like this done to me before."

Considering his medical condition at the time, the Claimant's decision-making ability may well have been impaired, and contributed to the "poor judgment" he admits he made that day. The Claimant testified that he "was kind of in shock" at the time, and his report of mental confusion may have been due to him actually being in shock, given his pain and concern over his growing loss of the ability to use his arm.

The Claimant's failure to initially tell the truth about the details of how he was injured was not self-serving or malicious. His statements were not intended to defraud the Carrier out of benefits to which he was not entitled. He did not falsely report an

injury that did not occur or fail to immediately report an injury that did occur. There is no evidence that he was trying to avoid responsibility for the accident. There is no evidence that he was trying to hide either his own or his co-workers' misconduct. Neither he nor they were charged with any other rule violation as a result of the operation they were performing when he was injured.

Honesty is of fundamental importance in the employment relationship and the failure to report honestly the details of an on-property injury may hinder the Carrier in its ability to remedy any related safety hazard. However, the Board concludes that under the unique circumstances present here, the penalty of dismissal is excessive, harsh and arbitrary. The Claimant was dealing with a serious injury when he was questioned about the details of the accident, and his judgment may well have been affected by his medical condition at the time. There is no evidence that his conduct was self-serving, or intended to hide other misconduct and there is nothing in his record to conclude that progressive discipline will not result in ensuring his truthfulness with his Employer in the future. Under the circumstances, the Board concludes that reinstatement without compensation is appropriate. The dismissal shall be converted to a long-term suspension, with a one-year review period from the date of the Claimant's return to work.

**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 22<sup>nd</sup> day of February 2024.