

PUBLIC LAW BOARD NO. 3304

Case No. 428  
Award No. 393

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

-and-

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of Nebraska Seniority District (Wymore) Conductor P.E. Mendoza for reinstatement to service with seniority unimpaired; removal of censure from his personal service record; and pay for all lost time as a result of an investigation held on August 3, 1995.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and employees within the meaning of the Railway Labor act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On June 27, 1995, the Claimant was assigned as the Conductor on Train No. 97MR047 operating between Kansas City, Missouri and Lincoln, Nebraska. He went on duty at 2:00 p.m. at Murray Yard in North Kansas City and arrived at Lincoln in the early hours of June 28, 1995. Upon arrival at Carling Tower, his off-duty point at Lincoln, Mr. Mendoza called Trainmaster J.M. Edwards and advised him that he had sustained an injury prior to departing Kansas City on Train 97MR047. The Claimant said that he stepped on some ballast (rocks) and injured his knee. He was examined at a local hospital and he completed the required First Aid Notification form.

The Claimant was withheld from service with pay. According to the Carrier, this was done as a precaution against further injury. On June 30, 1995, the Claimant was advised to attend an investigation on July 6, 1995, to determine his responsibility,

if any, for failing to report his personal injury in a timely manner; for failing to work in a safe manner; and for being accident-prone. The investigation was held on August 3, 1995. On August 14, 1995, the Claimant was advised that he was dismissed from service.

Initially, this Board finds nothing improper about the Carrier withholding the Claimant from service with pay pending his disciplinary investigation. The Claimant suffered no harm by this decision.

Nor do we believe that the Claimant failed to report his injury in a timely manner. His injury occurred at 2:20 p.m. on June 27, 1995. Ten (10) hours later when the Claimant arrived at Lincoln, Nebraska, he promptly reported his accident to Trainmaster Edwards. The Claimant did not report his injury sooner since he did not experience any pain until he began his road trip from Kansas City to Lincoln.

It is this Board's considered opinion that the Claimant's termination was unjustified. The Carrier has not proven by substantial evidence that the Claimant's negligence caused his personal injury on June 27, 1995. The Claimant was looking out for train and engine movements in Murray Yard when he slipped on some rocks. There is no evidence that he was careless when this accident occurred.

The Claimant sustained eighteen (18) injuries during his 37 years of service with the Carrier all but two of which were minor. The Claimant was out of work a total of four days for 16 of these injuries. There is no evidence in the record before this Board that the Claimant's negligence caused any of his 18 injuries over a span of 37 years. Accordingly, the Carrier has not established that the Claimant was injury prone merely because he incurred 18 injuries during his lengthy railroad career.

For all the foregoing reasons, this Board finds that the Claimant's termination on August 14, 1995, was unwarranted and the claim must be sustained as a result.

AWARD: Claim sustained.

Carrier is directed to make the within  
Award effective on or before thirty (30)  
days from the date hereof.

Robert M. O'Brien  
Robert M. O'Brien, Neutral Member

X.W. Mason  
X.W. Mason, Employee Member

R.L. Luther  
R.L. Luther, Carrier Member

Dated: Dec. 2, 1997