

PUBLIC LAW BOARD NO. 4104

Case No. 64

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PARTIES TO DISPUTE:

Brotherhood of Maintenance of
Way Employees

VS.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The thirty (30) days suspension imposed upon Welder J.J. Peters for alleged violation of Rules 564 and 567 of the Burlington Northern Safety Rules and General Rules and for alleged failure to conduct himself while off duty in a manner to prevent lost time as a result of personal injury suffered December 23, 1985, was arbitrary, capricious and on the basis of unproven charges.

2. The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time this dispute arose, Claimant, J.J. Peters, held the position of Welder at Downers Grove, Illinois. On December 23, 1985, Claimant filed a Personal Injury Report stating injury to his lower right back from lifting a track grinder. Claimant notified Carrier on January 3, 1986 and January 10, 1986 that he could not work because of his back injury. On January 3, 1986 Roadmaster Sheets was informed that Claimant was bowling on January 2 and 9, 1986.

As a result, an investigation was held on January 16, 1986. Claimant was found guilty of the charges and assessed a thirty day suspension.

The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier improperly disciplined

Claimant. It asserts that Claimant's doctor was aware of his bowling activity and found it to be consistent with his physical therapy. It further maintains that Carrier did not offer any proof to support the allegation that the bowling increased the period of time that Claimant was absent. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, maintains that Claimant's bowling activity aggravated an injury which lengthened the period that Claimant was absent and increased Carrier's liability. It asserts that Claimant testified that he was unable to work the days following bowling because his back was stiff and sore. In the Carrier's view, the activity of bowling while recuperating from a back injury is inconsistent. Therefore, the Carrier reasons that a thirty day suspension is appropriate in this case. Accordingly, it asks that the claim be rejected in its entirety.

The transcript establishes, without any doubt, that Claimant participated in a physical activity that aggravated his back condition. Claimant testified that on the mornings following bowling his back felt stiff and sore and he therefore was unable to work. It is obvious that Claimant failed to exercise care to prevent further injury to himself. Claimant's failure to prevent such reoccurrence or aggravation of his condition subjected him to appropriate disciplinary measures.

As to the penalty imposed, we do not believe that a thirty day suspension was arbitrary, capricious or excessive. Thus, we will deny the claim in its entirety.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

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

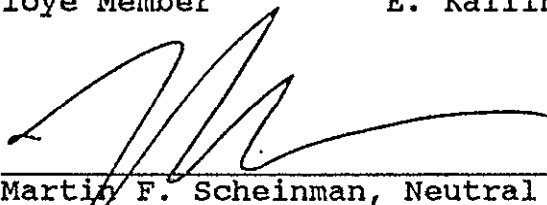
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

1/2/91