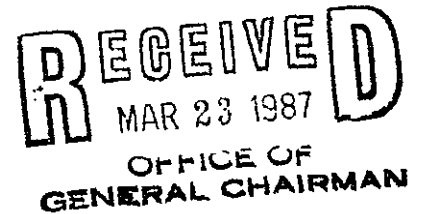


Public Law Board No. 4161



Parties to Dispute

Brotherhood of Maintenance of  
Way Employees

vs

Burlington Northern Railroad

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Case No. 11

Award No. 10

STATEMENT OF CLAIM

1. The thirty (30) days suspension imposed upon Section Laborer G. S. Koch for alleged violation of Rules 2, 574 and 585 was without just and sufficient cause and on the basis of unproven charges.
2. The Claimant's record shall be cleared of the charges levied against him and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant was advised on November 24, 1981 to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged failure to give factual information on personal injury allegedly sustained on November 19, 1981 and reported on November 20, 1981. After the investigation was held as scheduled the Claimant was notified on December 7, 1981 that he had been found guilty as charged and he was assessed a thirty (30) day suspension.

On November 20, 1981 the Claimant filed an F-27 Report with the Carrier in which he stated the following:

I was instructed to clean switch. The Foreman and Labor(er) told me to throw (the) switch. And (I) got (the) switch half way up and my lower back got pain.

It is the position of the Claimant that he sustained the injury at about 11:10 AM on November 19, 1981 while assigned to work as a Section Laborer on the Carrier's Bismark Section. An examination

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of the record as a whole, including documents signed by fellow workers, as well as testimony presented at the investigation, shows the Section Foreman and fellow crew members deny that the Claimant was either advised to throw the switch in question and/or that he was seen doing such on the day in question.

In view of this corroborating evidence, therefore, the Board can but conclude that the position presented by the Claimant in the record and on the F-27 Form filed on November 20, 1981 is self-serving and that it must be viewed in that light in the deliberations of this Board. Further, the Claimant had a history of personal injuries to his back and was restricted, according to testimony presented at the investigation by the Roadmaster, to light duty. If the Claimant had, in fact thrown a switch, he did so in contravention of orders given to him by supervision.


There is sufficient substantial evidence in the record to warrant the conclusion that the Claimant was less than honest when he filed the accident report on November 20, 1981. The Claimant may have indeed injured (or re-injured) his back somehow prior to filing the F-27 Report. There is simply insufficient evidence to permit the conclusion that the Claimant injured himself when he claimed he did, and as the result of orders. Arbitral forums in the railroad industry have consistently held that dishonesty by employees merits discipline (PLB 3311, Award 13; Third Division 11741 inter alia). The instant case must be decided in line with the precedent found in this line of Awards.

-AWARD

Claim denied.

  
Edward L. Suntrup, Neutral Member

  
B. W. Potter, Carrier Member

  
Karl P. Knutsen, Employee Member

Date: March 9, 1987