

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

v.

BURLINGTON NORTHERN RAILROAD

**STATEMENT OF CLAIM**

1. The dismissal of Laborer D. L. Decker for alleged violation of Rule 585 of the Burlington Northern Railroad Safety Rules and General Rules was unjust, unwarranted and in violation of the Agreement (System File S-P-382/AMWB 88-01-25).
2. The Claimant shall be reinstated with pay for all lost time and shall receive all fringe benefits such as credit for retirement, health and welfare benefits, vacation qualifying time, any seniority he could have obtained had he been working and the investigation will be removed from his personal record.

**FINDINGS**

On June 2, 1987, the Claimant, Mr. Dennis Decker, injured his arm while cutting the ends off railroad ties with a pick. Mr. Decker continued to work on June 2 and on June 3, 4 and 5, 1987. Mr. Decker completed Forms 12504 and F-27 on June 8, 1987, and submitted them to the Carrier on June 9, 1987. Subsequently, Mr. Decker was dismissed for violation of Rule 585 (failure to promptly report an injury and complete the required personal injury reports).

On October 30, 1986, Mr. Decker sustained an injury to his arm and shoulder; he submitted the required personal injury forms in a timely manner. Mr. Decker received treatment for the injury over a period of time, including a doctor's examination and pain suppressant injection on February 20, 1987. When on June 2, 1987, Mr. Decker experienced severe pain in his shoulder, he concluded that he aggravated the original injury. Although in some degree of pain, Mr. Decker continued to work the remainder of the week and saw his doctor on June 8, 1987.

It is evident that Mr. Decker took it upon himself to diagnose his condition. However, for good reason, Rule 585 does not permit employees to report only those accidents or injuries they believe warrant reporting. Rule 585 uses the word "all" to avoid situational judgements such as that exercised by Mr. Decker in this case. Re-injury or new injury, Mr. Decker was required to report the injury. If he had any doubts or questions concerning the submission of Forms 12504 and F-27, he could have asked his foreman or roadmaster for instructions. Instead, a week after the injury, Mr. Decker complete the required forms upon the advise of an insurance clerk.

Given the particular circumstance of the injury, his fifteen (15) years of service, and his employment record, the dismissal is excessive and harsh discipline. Lesser discipline would more appropriate balance the important interest of the Carrier in maintaining the integrity of its safety rules with Mr. Decker's long and unblemished record of employment.

## AWARD

Mr. Dennis Decker shall be reinstated to employment with seniority restored, and discipline reduced to a five (5) days suspension. Mr. Decker shall be compensated for wage loss suffered by him in excess of the five (5) days suspension.



Ronald L. Miller  
Chairman and Neutral Member



Bruce G. Glover  
Organization Member



Maxine M. Timberman  
Carrier Member

June 27, 1990  
Date