

PUBLIC LAW BOARD NO. 5696
AWARD NO. 15
CASE NO. 15

BURLINGTON NORTHERN RAILROAD

PARTIES
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. M. J. Bridgeman was unjustly dismissed for his alleged dishonesty when he allegedly reported an off-duty injury as an on-duty injury.
- (2) As a consequence of the Carrier's violation as referred to above, Claimant shall be reinstated to his former position with all rights unimpaired, the discipline shall be removed from his personal record, and he shall be compensated for all wages lost.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a trackman with 8 months seniority when he transferred from Memphis and commenced work on Gang 520 in Tulsa around July 20, 1994. He was dismissed on August 18, 1994 for dishonesty in the reporting of an off-duty injury as an on-duty injury.

The October 21, 1994 investigation reveals that late in the afternoon of July 25, 1994 Claimant informed his Section Foreman, Tom Greenwood, that he had hurt his right elbow during his move to Tulsa and that using the heavy maul to set hairpins was aggravating it a little and he wanted to see a doctor. Greenwood told him to tell the Roadmaster that he was going to see the doctor the next day.

Roadmaster Darin Martin testified that Claimant came to him at 7:30 a.m. on July 26, 1994 and told him that he had hurt his arm at home loading a third member (rear gear assembly) to move from Memphis to Tulsa, and that it continued to hurt and he wanted to see a doctor. Martin instructed him to report back after seeing the doctor. Claimant brought back a doctor's report on that day, indicating that he had a strain of the elbow and was restricted from repetitive lifting of over 10 pounds for one week, and was told to wear a sling. Martin testified that Claimant was immediately placed on the Early Return to Work Program, which exists for off-duty injury cases with expected full recovery within a one month period, and was paid fully for the balance of that week while he helped with paperwork in the office.

The record reflects three additional doctor's notes, dated August 4, 13 and 15, 1994 which indicate increased lifting restrictions, and an eventual referral to a orthopedic specialist. Martin stated that he gave

Claimant some forms to fill out to facilitate his return to work from an off-duty injury. Martin asked Section Foreman Keils to assist him in filling out the forms. Keils testified that Claimant stated that he hurt his arm moving a third member off-duty and they agreed to mark "Employee off-duty" as a description of the type of person he was on BN Form 15016-E. Keils explained what else needed to be filled out, but did not see Claimant complete the rest of the forms.

The Personal Injury Report forms submitted by Claimant on August 17, 1994 indicate that he was injured on the afternoon of July 26, 1994 while on duty using a 12 pound sledge hammer to drive hairpins, and that he tore tendons in his right elbow. BN Form 15016-E claims that he received an on-duty injury. Martin explained that the paperwork for an on-duty injury must be filled out immediately and a 3 man inspection is done to determine the cause, while such forms need only be completed in off-duty cases when the employee is returning to work.

The record reflects that Claimant wrote a personal handwritten note to Roadmaster Martin on August 15, 1994 indicating that his right elbow was an off-duty injury not related to the job. Martin testified that he was upset when he received the injury report forms on August 17 indicating that Claimant was now claiming this as an on-duty injury. Martin stated that Claimant had no explanation for the discrepancy in his story, and that he was removed for failing to provide factual information on the Personal Injury Report.

Claimant testified that he was injured on duty at 3:30 p.m. on July 25, 1994 from using the sledge hammer, and that he reported it to

Roadmaster Martin that afternoon, requesting permission to see a doctor before coming to work the following day. Claimant recalls telling Martin that the injury might possibly be connected with something he did earlier off duty.

Claimant stated that, based upon what some supervisors told him in Memphis, he thought he would get fired for saying that he had an on-duty injury. There is no evidence in the record that anyone had been disciplined for reporting an on-duty injury, although it appears that there may exist some peer group pressure to avoid on-duty injury reports in an effort to achieve a one year clear record enabling a gang to obtain a safety award.

Special equipment operator Spicer testified that he had a conversation where Claimant told him that he was injured on the job but reported it as an off-duty injury for fear of being the new man on the gang, but that since his injury got worse he could not afford to accept the time it would take to heal without money. According to Spicer, Claimant sought his opinion on how to fill out the accident report. Spicer testified that, as a friend, he told Claimant that if he changed his story he thought he would be fired.

Claimant testified that he wrote the August 15 note because he felt intimidated by Martin, who got angry with him when hearing something about his injury having occurred on the job. Claimant stated that he was afraid he would lose his job if he didn't say it was an off-duty injury. Claimant averred that he consulted the Union about how to fill out the injury report forms, and was told that he should not lie anymore. Claimant testified that his wife cannot work, and he could not afford to be off work

with no pay for months, so he filled out the Personal Injury Report indicating that it was an on-duty injury, knowing that he would likely be fired for it. Claimant admitted that he did not comply with the Rule Book in reporting the injury as off-duty and then changing his claim. He also agreed that putting July 26, 1994 as the date of the injury on his report was not factual.

The Organization contends that Claimant worked without incident for four days and immediately reported his injury to his supervisor on July 25, 1994, consistent with his claim of an on-duty injury. It notes that Claimant reported his injury as occurring off-duty for fear of losing his job and due to intimidation from Martin. The Organization claims the investigation was unfair and seeks Claimant's reinstatement.

After full consideration of all of the facts in this case, this Board is of the opinion that substantial evidence in the record supports the Carrier's action in dismissing Claimant from service for dishonesty in his reporting of his right elbow injury. Four witnesses testified that they were told by Claimant that he injured his right elbow at home loading a third member to move from Memphis to Tulsa during the week before he started working there. There was no evidence that Claimant was intimidated by fellow gang members prior to July 25, 1994, when he claims that he was injured at work, which would account for his needing to make up an intricate story about the cause of his injury in order to cover up where it occurred. Despite working on a gang when the injury allegedly occurred, there was no witness testimony to support Claimant's allegation that he sustained an injury at work on July 25, 1994.

Additionally, Claimant wrote a statement to Roadmaster Martin on August 15, 1994 indicating that his right elbow injury was not related to work and occurred off-duty. There is no basis for accepting Claimant's assertion that Martin intimidated him into writing the note. Rather, it appears that Martin acted immediately in getting Claimant into the Early Return to Work Program so that he would not suffer financial loss as a result of his off-duty injury.


A review of the Personal Injury Report form filled out by Claimant on August 17, 1994 reveals not only a claim that his injury occurred on-duty, but also an assertion that it took place on July 26, 1994, a date after which he had gone to the doctor, received restrictions, and was placed into the Early Return to Work Program for off-duty injuries, from which he benefited. Claimant could not explain why he did not write July 25 as the date of the injury if that is what actually occurred. Carrier treated Claimant consistent with its belief that he had an off-duty injury by placing him in to Early Return to Work Program. The record clearly shows that Claimant did not intend to change his claim until he learned that it was going to take longer to heal than he would be paid for.

Finally, there is no record support for Claimant's assertion that he was informed by supervisors in Memphis during his prior 6 months of employment that he would be fired for reporting an on-duty injury, or that he was harassed to lie about his injury in Tulsa yard. Claimant clearly knew the possible consequences of changing his story. Whether he lied the first time when he accepted the Early Return to Work Program for short term off-duty injury cases, or the second time when he reported that he

had incurred an on-duty injury, the fact remains that he was dishonest and failed to give a factual report of his injury in violation of Rules 564 and 574, both of which provide sufficient cause for removal from service.

AWARD:

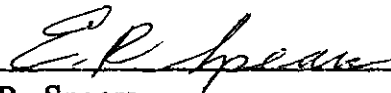
The claim is denied.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
January 22, 1997