

**PARTIES TO DISPUTE:**

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

**STATEMENT OF CLAIM:**

1. That the Carrier's decision to issue a Level S Suspension for 30 days from service for M. V. Acosta was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held 9:00 a.m. June 25, 1999 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

**FINDINGS**

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant reported to his Supervisor on June 7, that he suffered a lower back injury on May 27 while pulling spikes.

Asked why the delay in reporting the injury, Claimant responded he thought the pain was from a previous injury, and besides, he was reluctant to report the injury because of the crews' good safety record.

Despite experienced representation, the hard, cold facts are that Claimant knew he had

hurt himself pulling spikes or at least aggravated an old injury. Whether it was his kidneys that caused the pain, or whether it was an aggravation of an old injury or a new injury, Claimant was obligated to promptly report the pain to his Supervisor when it occurred. This he did not do. A proper diagnosis of his pain when it occurred, could have been made by the appropriate medical people on the day it occurred.

Claimant knew his obligation, yet chose to ignore it until such a time as the injury precluded him from working.

The Carrier produced substantial evidence of Claimant's culpability for the charges assessed, but the 30 days out of service for a 25 year veteran with no noted disciplinary assessments on his record and only the second injury during this span of time is somewhat harsh; however, Claimant must accept some responsibility for knowingly ignoring the rules. It is the Board's belief that the 30 days out of service should be reduced to 10 days. Claimant is to be paid for time lost as provided in the existing Agreement.


#### AWARD


Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

  
Robert L. Hicks, Chairman & Neutral Member

  
Rick B. Wehrli, Labor Member  
Dated: Sept. 20, 1997

  
Thomas M. Rohling, Carrier Member