

PUBLIC LAW BOARD NO. 5850

**Award No. 213
Case No. 213**

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on March 3, 2002, when it issued the Claimant, Mr. B. L. Farris, a 30-day suspension, for allegedly violating Rules 1.2.5, 1.2.7, and 1.6; for allegedly failing to properly report a personal injury.
2. As a consequence of the violation referred to in part (1), the Carrier shall remove any mention of the incident from the Claimant's personal record, and make him whole for any wages lost per the Agreement.

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.

On April 30, 2002, the Carrier advised Claimant that an investigation was being convened to determine:

"...your responsibility if any, in connection with your possible violation of Rules 1.2.5, 1.2.7, and 1.6 of the Maintenance of Way Operating Rules, in effect, January 31, 1999, as supplemented or amended and Rules S-1.2.8 and S-1.4.1 of the Maintenance of Way Safety Rules, in effect, January 31, 1999, as supplemented or amended, concerning your alleged failure to immediately report an alleged personal injury to yourself, while working as a relief Backhoe operator, at Amarillo on the Kansas Division, on January

3, 2002."

The investigation was held as scheduled and on May 28, 2002, Claimant was advised that he was being assessed an actual 30 day suspension for the reasons set forth in the notice of investigation. However, as of May 28, 2002, Claimant was still on furlough. The assessment of an actual 30 day suspension would not commence until he would be recalled from furlough.

Claimant was furloughed on January 4, 2002, but was recalled on January 5, 2002, to work on a derailment. At first he accepted the call, then 15 minutes or so later he called the Roadmaster indicating he could not make it, that he had to go to the hospital to get a shot.

Following is the statement of the Roadmaster who was a Carrier witness at the investigation relating his contact with Claimant:

"Concerning B. L. Farris

On 1-5-02 at 0810 I called B. Farris to come to work for a derailment and he said OK. 15 minutes later he called back and said he really wanted to but he had to go to the hospital to get a shot for back pain. I asked him what happened and he replied that it was something old and he would get back to me later.

On Monday he left the prescription paper and an appointment slip for an MRI at my office. I was not there at the time.

On Tuesday the 8th B. Farris left the doctors report of the MRI at my office while I was at the derailment, which is attached and that he will take shots in the back for 6 weeks to help his back. He is furloughed at this time.

I called him at home and asked him what happened to his back and he told me he did not know. He stated to me that he had had problems for the past year with pain in his back off and on. I asked him if he had ever felt a sudden pain or a pop at work and he said No. He did say that all he was worried about was his insurance since he was layed off and I told him that he had insurance for he and his family for 4 months after he was layed off and he said that was all he needed and he did not want to report an injury to the company."

The MRI report Claimant left did indicate a "substantial disc rupture". A clinical diagnostic conclusion was that it "demonstrates loss of disc signal at 5-1 compatible with degenerative disc disease."

On April 19, 2002, Claimant appeared at the Roadmaster's office, requesting that he file an injury report, and on that report Claimant stated he hurt his back on January 3, 2002, when he was raising or lowering the ramps on the trailer used to haul the backhoe. This is the first time Claimant related his back problem was job related. In at least three if not four conversations prior to April 19 with the Roadmaster, Claimant did not claim the back condition was job related. However, on January 9, 2002, Claimant was examined by a Dr. Veggeberg who stated in the section of the report dated January 9, 2002, entitled "PAST HISTORY" that Claimant stated he was working up around a ramp area.

The Roadmaster did file a Supervisor's Report for Employees Injuries, copy of which was given to the Organization, but when Claimant's Representative requested it be entered as an exhibit, it was denied by stating it was improper for the Organization to enter any documents. The presiding officer did state Claimant could enter the document if he wanted, but not his spokesman. To this the Board does not agree. Claimant and his Representative were presenting their defense and wished to include a certain document that they already were in possession of to back their defense. It is not to say each and every request for documents to be attached to an investigation has to be honored, but it must be given consideration, and if denied, it must be for a good and sufficient reason. In this instance, they had a copy of the report, there was much testimony regarding what was in the report, but it was never attached as an exhibit. Claimant's Representative speaks for and on behalf of the Claimant. If in doubt about any such document, it is better to err in favor of Claimant and/or his spokesman. This

document should have been attached.

It is understandable about Carrier's suspicious about the belated reporting of an on duty injury when four months have passed after the date the injury allegedly occurred, but that is a matter for another forum. It is this Board's position that despite Claimant's earlier contentions he was unaware of when or where the injury (if it is that) occurred, when they received Dr. Veggeberg's letter, Claimant should have been queried as to what he was referring to when he stated to the doctor that he was working around the ramps.

Under the circumstances, the discipline assessed Claimant is nullified. He is to be paid for all time lost, if any, as provided for in the Agreement and all traces of this investigation are to be removed from his file.

AWARD


Claim sustained.

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


Thomas M. Rohling, Carrier Member

Dated: December 16, 2002