

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 322**

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 when Claimant, S.C. Brown was given Managerial Leniency with time served of thirty-one days for alleged falsification on a personal injury. The Claimant was only harassed for being injured. There is nothing in the transcript to support any discipline, nor violation of Maintenance of Way Operating Rules 1.13 and 1.2.5. The Carrier should reinstate the Claimant with seniority, vacation, all rights unimpaired and pay for all wage loss commencing October 25, 2007, continuing forward and/or otherwise made whole.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline record and make Claimant whole for all time lost.

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 October 29, 2007, the Carrier wrote Claimant advising an investigation was being convened:

"...to ascertain the facts and determining your responsibility, if any, for your alleged falsification on a Personal Injury, reported to Roadmaster Savage at approximately 1340 hours on October 25, 2007 in the Chillicothe

foreman's office, while assigned as Track Inspector in Chillicothe, IL.

This is to advise you that you are being withheld from service pending results of this investigation."

The investigation, after one mutually agreed to postponement, was held on November 3, 2007.

On December 10, 2007, the Carrier wrote Claimant as follows:

"This letter will confirm that as a result of investigation on November 2, 2007, concerning your falsification on a personal injury, reported to Roadmaster Savage at approximately 1340 hours on October 25, 2007, in the Chillicothe Foreman's office, while assigned as Track Inspector in Chillicothe, IL, the discipline assessed you with managerial leniency is time served, 31 days, for violation of Maintenance of Operating Rules 1.13, Accidents, Injuries and Defect and 1.2.5, Reporting."

Falsification of a personal injury is a serious charge. Others have been dismissed for this same charge established during the investigation. In this case, the discipline was only 31 days.

A review of the transcript convinces this Board that the Carrier has not furnished sufficient evidence to establish Claimant's culpability for the charges assessed.

On this property most injuries must be reported promptly. Note the following Rule quoted in part:

"1.2.5 Reporting

All cases of personal injury while on duty or on company property, must be immediately reported to the proper manager and the prescribe form completed."

But there also exists a Rule that distinguishes between a soft tissue issue or a more severe injury. If it is a strain or pain that manifests itself within 72 hours, if the Claimant claims a soft tissue issue, he/she has 72 hours to report same and to fill out the prescribed form.

Claimant indicated that while unloading an angle bar from his truck, he heard or felt a pop in his shoulder but at that instant he felt nothing else. This occurred around 0730 AM.

Claimant is a Track Inspector and is assigned to inspect a certain area of track. If a defect is minor that can be repaired by the Track Inspector himself, he is expected to do so. Other defects of major concern or requiring more than one employee are to be turned over to either the responsible Section Foreman or Roadmaster.

Claimant went about his chores, but at 1300 hours or so he was in his Supervisor's office. That Supervisor handed Claimant a notice of investigation (involving an incident other than here concerned).

Claimant upon receipt of that notice got a little testy and he indicated he had suffered an injury earlier that day.

The prescribed injury form was completed then Claimant was taken to a medical facility for evaluation. The doctor's diagnosis was a minor strain and it was his recommendation that Claimant not lift more than 10 lbs. and no pushing or pulling with his right arm until October 31, 2007. The diagnosis and recommended treatment was dated 10/26/07.

This entire incident was based on Carrier's suspicions of a false injury claim when Claimant said nothing to no one until he was handed the notice of investigation other than this one.

Regardless of Claimant's reaction to the notice of another investigation, it is fact diagnosed by a doctor that he had incurred a soft tissue injury.

While working between the "pop" in his shoulder and the incident with his

Supervisor over an investigation notice and the fact he never mentioned the pop to anyone else, the plain fact is he had a soft tissue injury. He stated while working he was debating with himself about turning in the injury or perhaps with over-the-counter medications he would overcome the pain.

The Board finds that Claimant's record is to be cleared of this incident in its entirety.

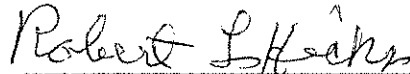
The Carrier has stated that there has been no lost time as Claimant has been on a medical leave. This is to be taken into consideration when computing time lost because of this incident. He, of course, has not been financially harmed if he had been on medical leave during the 31 day suspension, but if he lost any time he is to be compensated.

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



David D. Tanner, For the Employees

Dated:

August 27, 2008



Samantha Rogers, For the Carrier