

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 75

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 1 Formal Reprimand for Central Region, T. R. Ruiz 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 at 8:00 a.m. on March 6, 1998 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, the Formal Reprimand 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 has been a Foreman since 1994. On January 24, 1998, a Trackman working with Claimant indicated to him that while reseating some frog bolts, he felt a twinge of pain. Claimant asked if he wanted medical attention and it was declined as the Trackman thought it was just a pulled muscle and that he could work his way out of it. Nevertheless, Claimant observed the Trackman working that afternoon, and it appeared the Trackman was performing his duties capably. The next day Claimant again asked if he was alright, and again, the response was that he just needed some time to work it out.

Claimant made an entry into the diary each Foreman keeps of the daily activities about the

reported twinge, but did not report it to his Supervisor. On the third day after the incident, Claimant left the Section to work another assignment.

As of February 3, 1998, the Trackman's twinge manifested into a reportable injury, and when he filled out the injury report of February 3, 1998, he stated the injury occurred on January 27, 1998, and he had mentioned it to Claimant.

Because Claimant did not report the "twinge" to his Supervisor, the Roadmaster, on the date it was reported to him, charges were leveled and an investigation was held after which Claimant was assessed a record mark.

There is no disputing the facts in the case. Claimant, believing the "twinge" was just that, a "twinge," did not pass on to his Supervisor, the Roadmaster, the "twinge." Testimony elicited at the investigation revealed a prior past practice of handling twinges just as Claimant did, by making an entry in the Foreman's diary. But according to the Roadmaster, that practice ceased with the new rule book. All twinges, scratches, strains, sprains, aches and pains are to be reported immediately to proper management, in this case, the Roadmaster.

When queried about the new rule book and what schooling he had received relative thereto, Claimant responded that one week prior to the start of the gang, there was a leadership and gang management training session where such things as on-track safety and gang management were discussed, but Claimant could not recall anything being said that minor aches, pains, bruises, etc., were to be considered as injuries and the requirement to report same immediately.

To this Board it appears that a past practice had been aborted, but without notice given to all concerned. Under these circumstances, it is the Board's belief the imposition of discipline was premature. The responsible people should have been put on notice that the past practice of recording twinges, etc., in the diary were no longer acceptable, that such occurrences were to be reported immediately.


AWARD

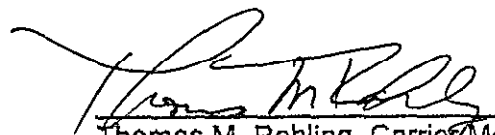
Claim sustained.

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: August 7, 1998