

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN RAILROAD COMPANY

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-and-

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 13

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AWARD NO. 13

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Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employes (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "1. The dismissal of Sectionman J. L. Weaver, effective November 16, 1979, was without good and sufficient cause. (System File S-P-199C).
2. Sectionman J.L. Weaver now be restored to service with seniority and other rights restored and pay for all time lost."

Claimant James L. Weaver entered the Carrier's service on June 12, 1979. At the time of his dismissal on November 16, 1979, Claimant was employed as a Section Laborer at Longview, Washington. By letter dated October 19, 1979, Claimant was notified to attend

an investigation on October 26, 1979, in connection with "...your alleged failure to report your alleged personal injury at about 10:30 AM, September 27, 1979." The investigation was held as scheduled, and Claimant was accompanied by a duly designated representative of the Organization. By letter dated November 16, 1979, Claimant was notified that he was dismissed from service, effective that date for violation of Burlington Northern Safety Rules No. 2, No. 662, and No. 667.

These rules read as follows:

No. 2. "An employee having any knowledge or information concerning an accident or injury before his tour of duty ends (or as soon thereafter as possible), must complete Form 12504, Report of Personal Injury, in triplicate, supplying the information required. All copies are to be sent to the superintendent."

No. 662. "Employees who withhold information or fail to give factual report of any irregularity, accident, or violations of rules will not be retained in the service."

No. 667. "Employees must comply with instructions from the proper authority."

Many of the facts in this case are in dispute. Claimant asserts that he suffered a back injury on September 2, 1979, and for that reason left the job at 10:30 a.m. Whether or not Claimant injured himself, the record supports the position of the Carrier that Claimant did not report the injury to proper authority. When Claimant went home, officers of the Carrier thought that he was sick and had no idea that he allegedly injured himself. On October 11, 1979, fourteen (14) days later, Claimant

called the Carrier's Roadmaster to tell him he had injured his back on September 27, 1979. That same day he completed and turned in a Form 12504, Personal Injury Report. Claimant also asserts that he made calls on practically a daily basis during the period between September 27, and October 11, 1979, in order to get in touch with his Foreman, but was unable to do so.

Of the two men Claimant named as having received his calls, one did not remember any calls and one did remember one call. Claimant did not leave a message for his Foreman, nor did he leave his number and ask that the Foreman call him.

The Organization argues that Rule 45B. governs in this case and that Claimant was in compliance with it. It also cites, among other cases, Award No. 4 of this Board, as support for its position. Finally, the Organization asserts the Carrier was remiss in its responsibility by not contacting Claimant and arranging for him to fill out Form 12504.

Rule 45B. states:

"Employees injured while at work will not be required to make accident reports before they are given medical care and attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment."

This Board agrees with the Carrier that in essence, Rule 45B. means that "employees injured while at work will not be required to make out accident reports before they are given medical care and attention." It does not condone a fourteen (14) day delay in reporting the injury, following one ineffectual attempt to call

Claimant's Foreman. It is worth noting that Claimant was well aware of his responsibility for reporting injuries. On two earlier occasions, in June and July, 1979, he injured himself. Both injuries were reported immediately.

This Board's Award No. 4 can easily be distinguished from this claim. In Award No. 4, the employe allegedly injured his back while shovelling snow on a Friday. He finished his tour of duty without reporting the injury because it was not until he was driving home after work that his back began to stiffen and he experienced soreness. He was put on sedatives by a doctor and had his mother inform the Carrier Monday morning that he had a sore back, and on Tuesday morning that he had sustained an injury on the preceding Friday.

This Board stated:

The Claimant made a reasonable effort under the circumstances to inform the Carrier of his condition. The nature of the injury was such that an immediate report was not required. The situation is not unlike one where an employee accidentally gets something in his eye but the irritation does not appear and there is no sense of injury for several days. Under such circumstances a prompt report of the injury could not be reasonably expected until the injury manifested itself.

In this case, Claimant did not discover until some time later that he was injured. He had more than adequate opportunity to comply with the rule requiring prompt reporting of any alleged injury.

This Board does not agree with the Organization's assertion that the Carrier was remiss by not contacting the Claimant. The

reporting obligation was on the Claimant, not the Carrier. There is no evidence to support the Organization's inference that the Carrier's officers were aware of the injury and were avoiding contact with Claimant.

Based on the record, there is substantial evidence to support the determination of the Carrier that Claimant was in violation of its safety rules. Accordingly, this claim must be denied.

AWARD: Claim denied.

F. H. Funk

F. H. Funk,
Organization Member

W. Hodynsky

Carrier Member

Richard R. Kasher

Richard R. Kasher,
Chairman and Neutral Member

June 12, 1982