

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2746

BURLINGTON NORTHERN, INC.	*	
	*	
-and-	*	CASE NO. 4
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 4
	*	

Public Law Board No. 2746 was established pursuant to the provisions of Public Law 89-456. The parties, Burlington Northern, Inc. (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) are duly designated carrier and 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:

"The seven days suspension of Sectionman R. W. Sharp, January 9, 1979, was without just and sufficient cause.

Sectionman R. W. Sharp now be compensated for all time lost and the suspension be stricken from his record."

Following an investigation held December 13, 1978, Claimant was suspended from service beginning January 10, 1979 up to and including January 16, 1979, for an alleged failure to promptly report an injury sustained while working on November 24, 1978.

Claimant began his service for the Carrier on March 13, 1978 as a section laborer at Benge, Washington. On Friday, November 24, 1978, while shovelling snow in Pasco Yard, Claimant allegedly injured his back. He finished his tour of duty on that

date without reporting any injury. While driving home that evening, his back began to stiffen and he experienced soreness. He called his doctor that night and the doctor prescribed medication, advising Claimant to rest, and arranged an appointment for Monday, November 27, 1978. On that date the Claimant's mother called the Carrier's Pasco office and advised the Claimant's foreman that the Claimant would not be in because he had a sore back. This call was made at approximately 6:50 a.m., prior to the start of the Claimant's assignment. The Claimant's mother did not mention the cause of the injury at this time.

On Tuesday, November 28, 1978, the day after Claimant went to see his doctor, his mother again called the Carrier at Claimant's request, and informed the Timekeeper that the Claimant had injured his back on November 24, 1978. The Timekeeper then filled out an F-27 injury report and this report was filed on November 30, 1978, six days after the injury. The Claimant did not make the calls because he was heavily sedated.

On December 7, 1978, the Carrier notified the Claimant to attend an investigation on December 13, 1978, "for the purpose of ascertaining the facts and determining your responsibility in connection with your failure to promptly report a personal injury that allegedly occurred on November 24, 1978 while performing service as a sectionman in Pasco Yard, and was not reported until November 30, 1978." After investigation, the Carrier assessed the seven (7) day suspension finding that

Claimant failed to comply with rules requiring a prompt report of personal injuries sustained in the Carrier's service.

The purpose of the injury reporting rules is to provide prompt medical attention to injured employees and to enable the Carrier to be informed of the injured employee's progress. The issue presented is whether the Claimant complied with the reporting requirements. This Board finds that the Claimant did meet those requirements. The Rule concerning personal injury reports reads as follows:

"Rule 45. PERSONAL INJURIES.


A. Employees shall not be held from work on account of declining to sign a release pending a final settlement of personal injury claims.


B. 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."


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 the instant case, Claimant was on his way home before he began experiencing any pain. His doctor prescribed sedatives so Claimant was in no

condition to call in and report the injury. His mother called in and reported to Claimant's foreman before the Claimant's next work assignment. Under these circumstances the Board finds that the Claimant substantially complied with Rule 45B. Accordingly, the claim will be sustained.

AWARD: Claim sustained.


F. H. Funk,
Organization Member


C. Lane,
Carrier Member


Richard R. Kasher, Chairman
and Neutral Member

July 6, 1981
Saint Paul, Minnesota