

PUBLIC LAW BOARD NO. 3304

Case No. 323
Award No. 288

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

-and-

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of Nebraska Seniority District (Creston) Trainman B.M. Emmereth for removal of the censure from his personal record and pay for all time lost as a result of an investigation held on January 7, 1992.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On December 20, 1991, the Claimant was assigned as Brakeman on Switch Engine No. 101-G in Creston Yard, Creston, Iowa. The yard was icy this day and the Claimant slipped and fell several times. He worked subsequent to December 20, 1991, however.

After he completed his tour of duty on December 24, 1991, the Claimant telephoned the crew calling office at Lincoln, Nebraska and laid off because of an injury. The crew caller informed Trainmaster Gullixson of the Claimant's telephone call and the Trainmaster contacted him at home. The Claimant advised Trainmaster Gullixson that he believed he injured his back on December 20 when he slipped and fell in Creston Yard. He explained that he did not report his injury until December 24 since it was not until then that he realized he would be unable to work and would have to see a doctor for his back injury. Trainmaster Gullixson told the Claimant he would have to complete a Personal Injury Report which he did on December 27, 1991.

The Claimant was cited to attend an investigation on January 7, 1992, to determine his responsibility, if any, for allegedly failing to properly report his personal injury on December 20, 1991. On January 15, 1992, the Claimant was censured and given a five (5) day deferred suspension for failing to properly report the injury he incurred on December 20. The Organization contends that this discipline was totally inappropriate since the Claimant was unaware that he had injured himself until December 24, 1991, when he immediately reported it.

The Nebraska Division Special Instructions provide, in pertinent part, that "[I]n the event an employee sustains a personal injury while on duty or on company property, a personal injury report...must be completed before employee is relieved from duty or before leaving company property... The immediate supervisor of the employee sustaining injury must be notified of injury by the quickest available means of communication before employee is relieved from duty or leaves company property."

There is no question that the Claimant did not report his injury before he left duty on December 20, 1991. However, he was unaware on December 20 that he had injured his back. It was not until December 24 that he realized that he had injured himself. He assumed that the injury had occurred on December 20 when he slipped and fell several times in Creston Yard although he could not say for certain when the injury happened. Based on these circumstances, this Board finds that the Claimant promptly reported his personal injury when he realized that he had apparently injured himself on December 20, in Creston Yard. The Claimant explained that his back was stiff on December 21 but he did not think at that time that he had injured himself the previous day.

Inasmuch as the Claimant promptly reported his personal injury when he realized that he had injured himself four (4) days earlier, the discipline assessed him on January 15, 1992, was improper and must be set aside as a result.

AWARD: Claim sustained.

Carrier is directed to make the within
Award effective on or before thirty (30)
days from the date hereof.

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

W. T. Pearl
W. T. Pearl, Employee Member

R. L. Luther
R. L. Luther, Carrier Member

Dated: JANUARY 19, 1994