

PUBLIC LAW BOARD NO. 4244

Award No. 232

Case No. 239

File No. 10-1313-9832.NMB

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(**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYEES**
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Parties to Dispute:

(**-and-** (
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(**BURLINGTON NORTHERN SANTA FE RAILWAY**
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Statement of Claim:

1. That the Carrier's decision to issue a Level S Suspension for twenty (20) days and one year of probation from service 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 9:00 a.m. September 22, 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, suspension from service 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.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

On July 7, 1998, the claimant, Adrian D. Guzman, was involved in a two-machine collision at Patterson Road in Joliet, Illinois. The claimant sustained a personal injury at the time of this accident. However, the claimant informed the Carrier that his injury was not serious and he did not require medical attention. No injury report was filed. During the two weeks which followed the accident, the claimant's condition as a result of the accident became progressively worse.

On July 21, 1998, the claimant informed the Carrier that he would need to visit a physician because of persistent pain that he was experiencing in his back as a result of the accident. At this time, roadmaster Dunaway filled out a personal injury/occupational illness

report form for the claimant. Roadmaster Dunaway completed the injury report form because the claimant was unable to complete this form without assistance. On July 22, 1998, the claimant was examined by a physician who determined that the claimant's x-rays were negative and that no restrictions would need to be placed upon the claimant's work duties with the Carrier. On August 10, 1998, the claimant visited the physician for a follow-up appointment. At this time, the physician prescribed two medications for the claimant.

The claimant was instructed by the Carrier to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged violation of Rules 1.2.5 and 1.2.7 of the Maintenance of Way Operating Rules (MWOR) when he failed to properly report a personal injury and withheld information from the Carrier. As a result of the investigation conducted on September 22, 1998, the Carrier issued the claimant a Level S suspension for a period of twenty days. Additionally, the Carrier placed the claimant on probation for a period of one year. The Board finds that the claimant's twenty-day suspension shall be reduced for the following reasons.

The following rules of the MWOR are applicable to the Board's decision in this case.

Rule 1.2.5 of the MWOR, entitled "Reporting," provides as follows:

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

A personal injury that occurs while off duty that will in any way affect employee performance on duty, must be reported to the proper manager as soon as possible. The injured employee must

also complete the prescribed written form before returning to service.

Rule 1.2.7 of the MWOR, entitled "Furnishing Information," provides: "Employees must not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations."

The evidence of record in this case reveals that the claimant immediately reported his personal injury to the proper Carrier officials on July 7, 1998. However, the claimant did not complete the prescribed injury report form on this date. At the investigation, the claimant testified as follows regarding his compliance with Rule 1.2.5 of the MWOR: "Well, the way it is, probable with half the rule. I did report it but I didn't fill out the form." Thus, the Board finds that the claimant did not fully comply with Rule 1.2.5 of the MWOR.

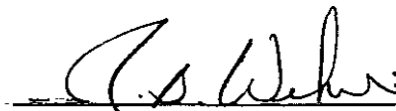
The claimant testified at the investigation that he informed his foreman, R. D. Laney, on August 10, 1998, that he received two prescriptions from his physician upon his follow-up appointment that day. At the investigation, foreman Laney testified that he could not remember whether the claimant informed him of the medication prescribed by the treating physician. Therefore, the Board finds that the Carrier has failed to satisfy its burden of proof that the claimant violated Rule 1.2.7 of the MWOR because he withheld information from the Carrier concerning his personal injury and/or status regarding prescription medications given to him by his physician. For these reasons, the Board concludes that the claimant's twenty-day suspension should be reduced as set forth in the Award.

AWARD

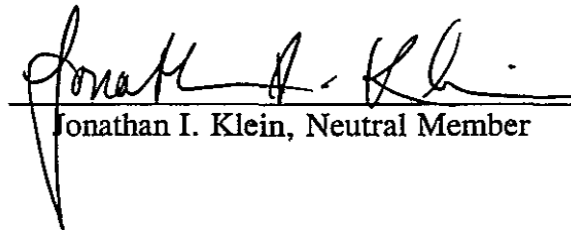
The claim is sustained, in part, as follows. The claimant's twenty-day suspension is hereby reduced to five days. Claimant shall be compensated for lost time for the balance of the original suspension. The Carrier is to comply with this Award within thirty (30) days from the date of issuance.



Thomas M. Rohling, Carrier Member



R. B. Wehrli, Employee Member



Jonathan I. Klein, Neutral Member

This Award issued the 23rd day of March, 1999.