

PUBLIC LAW BOARD NO. 4244

Award No. 251

Case No. 258

File No. 50-1313-9919.EXP

Parties to Dispute:

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**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

-and-

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BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. That the Carrier's decision to issue a Level S suspension for thirty (30) days from service and a three (3) year probation 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 10:00 a.m. on March 10, 2000 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

The claimant, machine operator Kelly Schmidt, allegedly sustained an on-duty injury on November 22, 1999, while he exited his dump truck at Newton, Kansas. At the investigation, the claimant testified that he immediately felt a pain when he exited the dump truck. (Tr. at 50). However, the claimant failed to notify the Carrier on November 22, 1999, that he had sustained an on-duty injury. (Tr. at 51). On November 23, 1999, the claimant informed his section foreman that he would be seeing a physician due to an injury. However, the claimant again failed to disclose the fact that he had sustained this injury while performing his assignment on the previous day. On November 24, 1999, the claimant finally informed the

Carrier of his on-duty injury and completed the appropriate injury report. The claimant was subsequently interviewed by a Carrier claims representative on December 8, 1999, concerning his alleged personal injury.

The Carrier instructed the claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his late report of an on-duty injury and possible falsification of such injury which allegedly occurred on November 22, 1999. As a result of the formal investigation conducted on March 10, 2000, the Carrier issued the claimant a thirty (30) day level S suspension for violating Rules 1.1.3, 1.2.5 and 1.2.7 of the Maintenance of Way Operating Rules (MWOR). Additionally, the Carrier placed the claimant on probation for a period of three years. The Board finds that the discipline assessed the claimant was excessive for the following reasons.

The following rules are applicable to the Board's decision in this case. Rule 1.1.3 of the MWOR entitled "Accidents, Injuries, and Defects," provides, in part, as follows:

Report by the first means of communication any accidents, personal injuries, defects in tracks, bridges or signals, or any unusual condition that may affect the safe and efficient operation of the railroad. When required, furnish a written report promptly after reporting the incident.

The employee on whom the responsibility most naturally falls must assume authority until the proper manager arrives.

Rule 1.2.5 of the MWOR entitled "Reporting," provides in relevant part:

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.

* * *

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 as follows:

"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 record reveals that the claimant sustained an on-duty personal injury on November 22, 1999. Further, the record indicates that the claimant was immediately aware of the fact that he had sustained an injury at the time of the incident. However, the claimant did not notify the Carrier of the facts surrounding his injury until November 24, 1999. Therefore, the Board finds that the Carrier has satisfied its burden of proof that the claimant failed to immediately report his on-duty personal injury to the proper Carrier official and complete the prescribed form in violation of Rules 1.1.3 and 1.2.5.

The Employee Personal Injury/Occupational Illness Report completed by the claimant on November 24, 1999, provides, in part, as follows: "Describe fully how injury or occupational illness occurred: Stepping down off dump truck when felt sudden pain in left

shoulder & neck.” At the investigation, claims representative David Anderson testified that the claimant informed him on December 8, 1999, that he slipped on the step while he exited the dump truck. The claimant also stated at the investigation that he slipped while he exited the dump truck. The claimant further testified that he was experiencing a significant amount of pain at the time that he completed the injury report on November 24, 1999, and that he more fully detailed the circumstances surrounding his injury during his subsequent interview with claims representative Anderson. Based upon these facts and circumstances, the Board finds that the claimant did not withhold information or fail to give all the facts to the Carrier regarding his injury. As such, the Carrier has failed to satisfy its burden of proof that the claimant violated Rule 1.2.7 of the MWOR.

The record indicates that the claimant has been employed by the Carrier since July 29, 1996, and he had received no discipline prior to the incident at issue. Based on the claimant’s discipline record and the facts presented in this case, the Board finds that the discipline assessed the claimant was excessive. Accordingly, the claimant’s suspension is reduced as set forth in the Award.

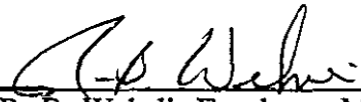
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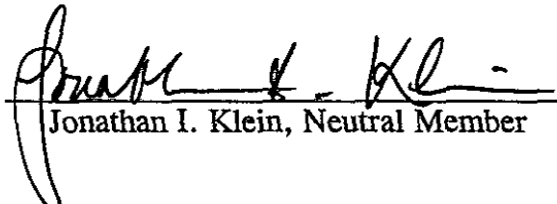
The claim is sustained in part as follows. The discipline assessed the claimant is hereby reduced to a ten-day suspension and one year probation, and the claimant is to be compensated by the Carrier for the

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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 9th day of June, 2000.