

PUBLIC LAW BOARD NO. 4244

Award No. 255
Case No. 262
File No. 80-FR94I3-006.EXP

Parties to Dispute: (**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYES**
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(**-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 1 deferred Suspension for five (5) days with two years 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 at 10:00 a.m. on June 7, 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, pursuant to the provisions of 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, R. C. Tannehill, was assigned by the Carrier to the position of patrol gang foreman for the territory between mile posts 262.4 and 316.0 on the Red Rock Subdivision. At approximately 5:00 p.m. on May 5, 2000, assistant patrol gang foreman M. C. Courtney twisted his ankle while working in the vicinity of mile post 281. At approximately 10:30 p.m. on May 5, 2000, Courtney transported himself to the local hospital in order to receive medical treatment for his personal injury. During the morning of May 6, 2000, the claimant informed roadmaster L. W. Trimble that Courtney had sustained a personal injury during his tour of duty the previous day.

On May 18, 2000, the Carrier conducted a conference and issued a letter of discipline to the claimant which provides, in part, as follows:

This letter will confirm that as a result of our conference on May 18, 2000, concerning your responsibility in connection with late reporting of injury sustained by M. C. Courtney on May 5, 2000, you are issued a Level 1 deferred suspension of five days with two years probation for violation of Maintenance of Way Operating Rules 1.2.5 and 1.2.7.

On May 23, 2000, the Organization requested that a formal investigation be conducted under the provisions of Article 11, Rule 91(2) of the Frisco Agreement. The Carrier subsequently instructed the claimant to attend an investigation in order to ascertain the facts and determine his responsibility, if any, in connection with the late reporting of the personal injury sustained by Courtney on May 5, 2000.

The following Maintenance of Way Operating Rules (MWOR) are applicable to the instant 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 of duties 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 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 establishes that assistant patrol gang foreman Courtney, the employee who sustained the personal injury in this case, reported to and was supervised by the claimant, the patrol gang foreman. At the investigation, roadmaster Trimble testified that the claimant informed him on May 6, 2000, that Courtney had sustained an on-duty personal injury at 5:04 p.m. on May 5, 2000, while setting off a high rail. Furthermore, roadmaster Trimble stated that the claimant informed him that he had completed the patrol of his assigned territory on May 5, 2000 without Courtney due to the latter's personal injury on May 5. Finally, roadmaster Trimble stated that he was informed by Courtney that Courtney had notified the claimant of the fact that he had sustained a personal injury at the time of the incident.

The claimant testified at the investigation that Courtney informed him at the conclusion of his tour of duty that he was not injured. Thus, there was no injury to be reported to the Carrier on May 5. The claimant further stated that he was subsequently informed by Courtney on the morning of May 6 that he had, in fact, sustained a personal injury. According to the claimant, he promptly notified the Carrier that Courtney had sustained an injury.

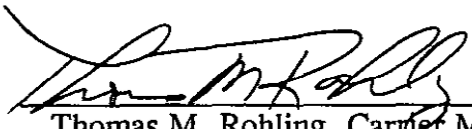
There is no dispute in this case that Courtney sustained a personal injury. In order to resolve this claim, the Board must first determine when the claimant knew that Courtney sustained an injury. Based upon the testimony at the investigation, the Board finds that the claimant had knowledge prior to departing the property on May 5, 2000, that Courtney

sustained a personal injury while setting off the high rail. However, the claimant failed to report Courtney's personal injury to the Carrier on the date when it occurred.

The Board notes that the claimant subsequently informed the Carrier on the morning of May 6, 2000, that Courtney sustained an on-duty injury. Under the particular facts and circumstances presented in this case, and in accordance with the standard handling procedure which the Carrier attempted to apply, the Board finds that the discipline assessed the claimant was improper. Accordingly, the claimant's discipline shall be modified as more fully set forth in the Award.

AWARD

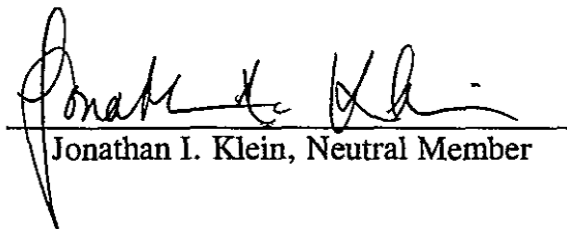
The claim is sustained, in part, as follows. The claimant's five (5) day Level 1 deferred suspension is hereby reduced to a formal letter of reprimand, and the claimant's two year probation period is hereby reduced to one year. The Carrier is to comply with this Award within thirty (30) days from the 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 October, 2000.