PUBLIC LAW BOARD NO. 4244

Award No. 285
Case No. 292

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern and Santa Fe Railway
(Former ATSF Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"1. The Carrier violated the Agreement when on July 26, 2002, Mr. T. L. Conway was dismissed from service for allegedly violating Rules 1.1, 1.1.1, and 1.13 of the Maintenance of Way Operating Rules and Rules S-1.2.5, S-1.2.8 of the Maintenance of Way Safety Rules in conjunction with a false report of injury on duty.

"2. As a consequence of the Carrier's violation referred to in part (1) above, Mr. Conway shall be reinstated with seniority, vacation, all rights unimpaired and paid for all wages lost in accordance with the Agreement." [Carrier File No. 14-02-0174. Organization File No. 190-13I3-028.CLM].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the dispute herein.

The Claimant, Mr. Thomas L. Conway, was hired by the Carrier on August 27, 2001. At the time of the incidents which resulted in his dismissal from service, he was working as a Welder in the Carrier's Maintenance of Way Department. An investigation was held on July 1, 2002, on the following charge:

> "[F]or the purpose of ascertaining the facts and determining your responsibility, if any, in connection with report alleging that on May 2nd, 2002, you completed an allegedly false report of injury on duty after previously stating to BNSF supervisors that injury was not caused by specific incident or location, and that you did not know where or when you may have been injured; so as to place responsibility, if any, involving possible violation of Rules 1.1, Safety; 1.1.1, Maintaining a Safe Course; 1.1.3, Accidents, Injuries and Defects; 1.2.5, Reporting; 1.6, Conduct, items 1, 4, and 5; and 1.13, Reporting and Complying with Instructions of the Maintenance of Way Operating Rules . . . and Rules S-1.2.5, Safety Rules,

Training Practices, Policies; and S-1.2.8, Reporting of the Maintenance of Way Safety Rules[.]"

The lengthy transcript of evidence and testimony taken at the investigation shows the following summary of events. On March 3, 2002, the Claimant was the victim of aa assault while off duty, which resulted in a laceration on his head requiring nine staples, as well as neck and shoulder injuries from a blow by a cue stick. Having staples inserted on his head, he was unable to wear a hard hat, and had been told not to return to work until he had seen his doctor. He marked off duty to his immediate supervisor, Roadmaster John Palacios, stating he had suffered an injury at home. He did not file a written report on his injuries, nor was he instructed to do so. He was permitted to be off for eight work days.

On April 16, the Claimant said he began suffering what he thought was a migraine headache, as well as pain in his neck and upper back. He marked off work on April 19 to consult his personal physician, who diagnosed his problem as a pulled muscle in his neck. Although the Claimant testified that his doctor conjectured that he probably hurt himself at work, he told Mr. Palacios that he didn't know when or how he had gotten hurt, and he didn't want to report it as an on-duty injury. He said he felt he had complied with the Carrier's rules by reporting it to his supervisor.

Following two intervening rest days, the Claimant returned to work on March 22. During that day, he had conversations with four supervisors, Roadmaster Tony Silva, Roadmaster Palacios, Division Engineer Rick Mason, and Welding Supervisor Mark Neufeld. Their combined testimony, together with that of the Claimant, indicates that the Claimant called Mr. Silva, stating that he was still suffering some pain, and wanted to report it as an on-duty injury because he could not afford to pay for the prescribed medication. (In the transcript, the Claimant suggested that this was a misunderstanding, since under his prescription plan, medications would cost only $5.00 each, and he was able to pay for this).

In a three-party telephone conversation with Division Engineer Mason and Welding Supervisor Neufeld on March 22, the Claimant was unable to identify with any specificity an incident causing his injury on April 16, nor the location. Asked again whether he wanted to fill out an injury report, the Claimant declined to do so. He said he only wanted some time off to see his doctor again and have his physical complaint taken care of. Mr. Neufeld testified that Mr. Mason agreed to give him a week off. He further testified that Mr. Mason said he wanted to be sure that there was no task being performed that caused the Claimant's injury, and the Claimant said there was not.

The record shows that the Claimant was off work the rest of that work week, April 23 through 26, and returned to work on Monday, April 29. On Wednesday, May 1, the Claimant reported that he had hurt himself again, affecting his lower back, while loading heavy boxes of

welding material on a truck. In a telephone conversation with Mr. Silva, he said he just wanted to go home and rest. He was told to stay where he was and Mr. Silva would meet him there.

He was interviewed by Mr. Silva, who insisted that he fill out injury reports for both April 16 and May 1, because the Claimant suggested the May 1 injury was a worsening of the April 16 injury, and the pain in his upper back had migrated to his mid- and lower back. Mr. Silva said he was told to obtain two injury reports by Mr. Tom Longanecker, Manager of Safety.

Both injury reports submitted by the Claimant were dated May 1, 2002. The report for April 16 described the injury as "headaches, neck and upper back pain." The cause was described as "regular work habits." The report for May 1 described the injury as "low back pain." The cause, "loading welding material on truck."

On July 26, 2002, Assistant Division Engineer M. S. Theret (who was also the Conducting Officer at the investigation) wrote the Claimant his decision on the charges. His letter reads, in part, as follows:

> "This letter will confirm that as a result of formal investigation on July 1, 2002, concerning your false report of Injury On Duty after previously stating to BNSF supervisors that injury was not caused by any specific incident or location, and that you did not know where or when you may have been injured, you are dismissed from employment for violation of Rules 1.1 *Safety;* 1.1.1 *Maintaining a Safe Course;* 1.13 *Reporting and Complying with Instructions* of the Maintenance of Way Operating Rules . . . and Rules S-1.2.5 *Safety Rules, Training Practices, Policies;* and S-1.2.8 *Reporting* of the Maintenance of Way Safety Rules . . ."

The Rules cited in Mr. Theret's letter read as follows:

Rule 1.1

> **"Safety**
> Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.
>
> **"Empowerment**
> All employees are empowered and required to refuse to violate any rule within these rules. They must inform the employee in charge if they believe that a rule will be violated. This must be done before the work begins.
>
> **"Job Safety Briefing**
> Conduct a job safety briefing with individuals involved:

- Before beginning work
- Before performing new tasks
- When working conditions change

The job safety briefing must include the type of authority or protection in effect."

1.1.1

"In case of doubt or uncertainty, take the safe course."

1.13

"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."

S-1.2.5

"Comply with all company safety rules, training practices and policies and engineering instructions."

S-1.2.8

"Make reports of incidents immediately to the proper manager."

Mr. Theret's dismissal decision was promptly appealed by the Organization's General Chairman to the Carrier's Assistant Director - Labor Relations, Mr. Dennis Merrell,

The Organization initially points out that the letter of charge alleged that the Claimant filed a false injury report on May 2, 2002. There was no report filed on May 2. The Claimant's representative, Assistant General Chairman Gary Marquart, at various points in the investigation, inquired about reports allegedly filed on May 2, and no one noted any such filing, except the testimony of Roadmaster Silva, at Transcript Page 14:

"Q. Mr. Silva, in front of me I have two sheets submitted by yourself on 5/1/2002 of statements when you talked to Mr. Conway regarding the alleged allegation on the investigation and also injury. Will you please read the statement?
A. Yeah, these are mine.
Q. Will you read them out loud, please?
A. Okay. The first being –
MR. MARQUART: Mr. Chairman, I have a question. When were those statements completed, if I could?

THE WITNESS: They were completed the night of the 1st, May 1st.

MR. MARQUART: But I don't think we're talking about those reports. Are we not dealing with reports that were filed on May the 2nd as alluded to in the –

THE WITNESS: Well, it carried over – because it started at 10:30 p.m. because it carried over from the 1st to the 2nd."

The Organization concludes that the Carrier has failed to prove that the Claimant filed any personal injury report on May 2, 2002, as charged, and therefore the Carrier has not borne its burden of proof.

The Carrier rejoins that while the injury occurred on May 1 and the initial paperwork was filed and completed late on that date, it "got into the system the following day, May 2, 2002." It characterizes this as a minor discrepancy, or technicality, which did not prevent the Organization from offering a defense or impinge on the Claimant's rights in any way. The fairness of the investigation was not impaired.

The Organization argues that the Claimant suffered an injury to his back on May 1, 2002, it was properly reported to his supervisors, and an injury report was filled out as directed by Roadmaster Silva. (The Organization states that the Claimant was refused medical attention until the injury reports were executed, violating a letter of understanding which states that an injured employee requesting immediate medical attention will not be required to fill out an injury/accident report before being afforded medical attention. While that may be true in this case, that grievance is not before this Board, and does not have any bearing on the outcome of the instant case).

The Carrier responds that the Claimant made material misrepresentations about the cause of his injury. It summarizes its position in these words from Mr. Merrell's letter dated November 2, 2002:

> "This is highlighted by the testimony that shows the Claimant was involved in a series of injuries and complaints starting with an off duty injury he claimed after being involved in a bar fight. The full litany of problems that the Claimant dealt with over the period from March 25 – May 1, 2002, clearly show that the Claimant had something to hide, and that his claim of an on duty injury on May 1, 2002, is in direct conflict with his previous statements to Carrier Officers. The mere fact that he had an inured [*sic*] back does not prove that he injured it while he was on duty, in the way he is lately tiring [*sic*] to claim."

On February 27, 2003, Mr. Merrell again addressed this case with the Organization's General Chairman, reviewing the totality of the evidence. First, the Claimant was injured in a bar fight on March 3, 2002. He suffered an injury which required him to lose time from work.

Maintenance of Way Operating Rule (MWOR) 1.2.5 requires that off-duty injuries affecting an employee's duties must be reported at once, and prescribed forms completed before returning to work. He misrepresented his injury as one occurring at home.

Next, says the Carrier, the Claimant alleges he began suffering a headache while at work on April 16, 2002, laid off work on April 19 to see his personal physician, and was diagnosed with upper back pain. The Claimant said the doctor said it happened at work. In fact, the evidence indicates that the doctor asked the Claimant what kind of work he did, and then opined, "You just most likely did it at work." On April 22, the Claimant indicated that he wanted to file an injury report for April 16, but in a conference call with Division Engineer Mason and Welding Supervisor Neufeld, he could not identify any location or any incident which caused the alleged injury.

The Carrier states that the Claimant knew he was being charged with improperly filing an injury report. The Claimant knew he was accused of falsely reporting an on-duty injury which he had previously said was not work-related.

Furthermore, the Carrier argues, even if he was truthful when he filed an on-duty injury report on May 1, 2002, he was in violation of the rules which require prompt reporting of injuries. (The Board notices that although the Claimant was charged with violation of MWOR 1.2.5, which requires that all cases of personal injury on duty must be immediately reported and the proper form completed, the notice of discipline does say that this rule was violated).

The Board has carefully examined and considered the voluminous record in this case, and the arguments of the Parties. There is more than a little irrelevant evidence in the investigation transcript and attached exhibits.

First, the Claimant suffered an injury in a bar room brawl on March 3, 2002. He could not work for several days. He stated that he was injured at home. He also said that he reported it as an injury at home because "I didn't want everybody at work knowing." He was given permission to be off work by his supervisor. He did not file a report, nor was he asked or instructed to do so. Although this injury and its cause was the subject of considerable inquiry during the course of the investigation, the Board does not find this off-duty injury to be the subject of Mr. Theret's notice of discipline dated July 26, 2002, to which reference was made to "false report of Injury On Duty."

The Claimant next suffered an on-duty injury on March 18, 2002, a sprain or strain to the lower back. Although the record of this injury was entered as an exhibit, there is no indication that it was not properly reported, but its existence indicates that the Claimant was aware of the procedures for reporting injuries.

On April 16, 2002, the Claimant experienced what he described as a migraine headache while performing welding tasks. He worked the two following days and marked off on April 19 to visit his personal physician. He called Roadmaster Palacios, stating that he had a pulled muscle, he did not know when or how it was acquired, but he declined to fill out an injury report when he was asked if he wanted to. Two rest days followed the 19th, and on April 22, he told Mr. Palacios that he now wanted to report an on-duty injury. Apparently because of the Claimant's change of mind, Mr. Palacios consulted Division Engineer Mason, who in turn contacted the Claimant, in the three-way conference call in which Mr. Neufeld participated. Mr. Neufeld's notes on that call read, in part:

> "Rick Mason, Tom Conway, and myself then had a three way conference call. Rick Mason asked Mr. Conway to tell him what was going on. Mr. Conway stated that during the previous week he had been putting in an I-Bond and Welding on a Frog and from that he just had a Headache. Rick Mason asked Mr. Conway if there was any report of Injury that needed to be stated or any injury whatsoever that needed to be Reported. Mr. Conway stated no. Rick again asked Mr. Conway if he was performing a task on the job or at work were [*sic*] he could think of where an injury occurred. Mr. Conway stated he could not think of one. Rick agreed to let Mr. Conway go to his own Dr. and take the week off if he felt that he needed to. Mr. Conway agreed to do that. Rick again asked, and wanted to be sure that there was no task being performed where Mr. Conway was hurt. Mr. Conway stated that there was not." [Exhibit F]

The final event occurred on May 1, 2002. Roadmaster Silva said the Claimant notified him about 10:30 p.m. that he had hurt his back, again, while loading boxes of heavy welding material on a truck. He said that he had hurt himself previously, while working in Mr. Palacios's territory, who didn't want to have a reportable injury, because it happened at work, but his back was not getting any better. He said he did not want to make an injury report, but just wanted to go home and rest. He added that Division Engineer Mason knew all about it, apparently referring either to the previous injury on April 16, or to the suggestion that Mr. Palacios wanted to avoid a reportable injury. He marked off duty to his immediate supervisor, Roadmaster John Palacios, stating he had suffered an injury at home. Mr. Silva said he contacted Mr. Mason, who said the Claimant had not told him that (what?) on April 22. The record is not clear on this point. Mr. Mason instructed Mr. Silva to see if the Claimant needed to see a doctor.

Two injury reports were filled out, one for April 16 and one for May 1. The transcript contains lengthy testimony regarding the injury report for April 16. Roadmaster Silva was examined:

> "Q. [By Representative Marquart] Okay. This employee personal injury report, the last sheet that we're talking about in this B-7 exhibit. Isn't it a fact that

the employee, Mr. Conway did in fact not want to turn in this initial injury? You had stated that on several times that he had told Mr. Palacios that he did not and he told Mr. Mason he did not.

A. That's what he stated, yes.

Q. And isn't it a fact that it was your insistence that he fill this out with an injury date of April the 16th?

A. Yes.

Q. And you did tell him he needed to do that?

A. Yes.

Q. And at that time that's when he filled all this stuff out?

A. That's correct.

Q. But he wasn't wanting to?

A. No, he didn't have a problem with filling it out.

Q. Okay. But when he initially turned it into Roadmaster Palacios and talked to Mr. Mason, he did not want to do that at that time?

A. Right. He had stated that he didn't want to do it back then, but based on the fact that there was an injury on that date, I had to have him fill out that paperwork pertaining to that injury.

Q. On his injury that he suffered on May the 1st or whatever day we're talking about here, that was the one that he was wanting to turn in and that dealt with his lower back; is that correct?

A. His middle lower back is what he told me, yeah.

Q. And this other incident with his shoulders, neck, head, whatever, correct, was a different party of the body?

A. Yes and no. Based on the conversation I had with him, no. He had told me it was all contributing back to that original injury and it was getting worse. Now it had moved from the upper part of his back to now his mid to lower back.

Q. Okay. But on his second injury report or the report that he wanted to fill out, we haven't got that entered into evidence yet, but isn't it a fact on that report that that report points to his lower back?

A. On the second one? Yeah, yes, it does.

Q. And he isolated that to a particular incident and scenario that caused that injury?

A. On what?

Q. The second report.

A. Yes.

Q. But getting back to the first report. That's the one he did not want to turn in but at your insistence he did fill out?

A. No, not to me. He didn't want to fill one out with Mr. Palacios. When he had talked with me, that's the reason I pursued it, the whole back pain, neck pain injury, he told me that it was related to the same thing. That's why everything

was written up the way it was. Those were based on my notes and my investigation.

Q. But at your insistence he filled out the first report?

A. From the original incident? Oh, yeah, yes." [Transcript pages 30-32]

"Q. [By Conducting Officer Theret] Mr. Silva, again, why did you put the date of April 16th down on the report?

A. When it was reported to me, it was stated that the injury he had now was made worse by the injury that he had back on the 16th; otherwise I wouldn't have pursued it in that manner. So as I questioned with my supervisors on what I base this on, on different scenarios or what he had told me, that it had been made worse because of the moving of the material he was doing on the 1st, do I base it on a report that hadn't been filled out or do I base it on this night, and I was instructed that being that it was related back to the injury on the 16th, that I needed to fill the proper documentation out, claim them both in there as I did in my original report, being that there was no original report turned in.

Q. And you said you were instructed. Who were you instructed by?

A. Tom Longanecker, the manager of safety." [Transcript page 33]

Mr. Silva prepared a SUPERVISOR'S REPORT OF BNSF EMPLOYEE INJURY/ILLNESS, also dated May 1, 2002, apparently intended as an account of a supervisor's injury/illness investigation and analysis. Under the heading, "Description: Describe how the accident occurred," he wrote:

"Employee claims that initially his pain from 4-16-02 while working in Merced and did not know when or how the injury occurred. Only that he was performing his regular dutied [*sic*] welding that day. His symptoms began as headaches and he thought it was a migraine. He does not know what he did specifically to cause his pain. However he stated that he agrevated [*sic*] his previous condition today on 5-1-02 by moving and loading Boutet material from a trailer to there [*sic*] work truck. He did not bend, twist or push anything but lifting the material over his shoulders to put in the truck gave him added pain and was related to the previous injury. Mr. Conway did state that there was not specific incident that occurred at the time of the original injury." [Exhibit B]

The Claimant gave his account of how the April 16 injury occurred, based on his doctor's diagnosis. The manner in which the doctor drew his conclusion was the subject of considerable inquiry and later, exchanges between the Organization and the Carrier. Here is the Claimant's testimony, on direct examination:

"Q. Did he ask you what caused the pulled muscles?

A. He asked me what I've been doing and I just said regular work habits. He goes, 'Well, what do you do?' And I told him where I work and what I did. He said, well you pulled your neck muscles. He asked me when I first started having headaches and I told him when I was putting the I-bond when I was working and he said, 'Well, that's what's wrong with you. . .'

Q. All right. So when you talked to the doctor, he said you pulled a muscle at work?

A. Yeah. Well, yeah, but it wasn't a workmen's comp doctor. It was my own personal doctor.

Q. But still, did he tell you that you did it at work when you were doing insulated plug?

A. I told him, you know, that I hurt my back and he said I pulled a muscle in my neck. Basically he was saying I did it when I first started having headaches that day.

Q. And that was at work?

A. That was at work. But he never came out and said you did it right then. He never pinpointed it.

Q. Did you inform Palacios, Mason or Neufeld that the doctor told you you did it at work on the work you were doing?

A. Well, as soon as I came out from the doctor's office, I called Palacios and told him.

Q. That you did it at work, that the doctor told you you probably did it at work?

A. Yes, I told him that. . . ." [Transcripot pages 81-82]

In contrast to the above testimony, the Claimant, when questioned by various supervisors on April 22, was unable to state with certainty that his pain was the consequence of any specific incident, nor even with a certainty that it occurred while he was on duty.

Study of the voluminous file in this case leads the Board to the following conclusions.

First, the bar room brawl on March 3, 2002, was an interesting side trip en route to the real destination. Considerable testimony and evidence was presented regarding this incident, but in the end, it was of little consequence to the outcome. The Claimant should have reported this off-duty injury, because MWOR 1.2.5 requires that an off-duty injury which affects the performance of an employee's duties must be reported. The Claimant said that he suffered an injury at home because he did not want it known that he was in a fight in a bar room, but he was not instructed to file a report, in any event. Despite all the time devoted to inquiry about this incident, no findings were made in the Carrier's decision on the investigation.

Passing reference was made to an on-duty injury the Claimant suffered on March 18, 2002, which was apparently reported properly.

The Claimant may have suffered some kind of on-duty injury on April 16, 2002, discussed above. He vacillated about whether to report it as an on-duty injury, telling Mr. Palacios he did not want to report it on April 19, deciding he did want to report it on April 22, and changing his mind again the same day, after talking with Mr. Mason and Mr. Neufeld. He was not ordered to fill out an injury report on either of those dates. Clearly, he should have filled out a report, based on what information he had, vague though it might have been, even if the injury had occurred off duty, since he was losing time from work. By his failure to make the report, he again violated MWOR 1.2.5, specifically that portion which requires that the prescribed report be completed. He did comply with that portion which requires reporting to the proper manager, although not "immediately," as the Rule demands. But in the notice of discipline, MWOR 1.2.5 is not named.

Finally, the Claimant was injured again on May 1, 2002, and he executed an on-duty injury report the same night. There is nothing in the record to indicate that this injury was not genuine, nor any evidence that it was not reported properly.

The Organization argues that the Claimant was charged with infractions on May 2, 2002, but the record contains no evidence of anything at all on that date. The General Chairman wrote:

> "The facts are that there was no report filed on an injury occurring on May 2, 2002. In the entire Transcript, no where will you find any report being filed or injury allegedly occurring on, May 2, 2002."

The Carrier rejoins that the Claimant's defense was not impaired by this "technicality." He knew he was being charged with improperly filing an injury report, on an injury he first stated he did not believe was work related, and later indicated was an on-duty injury. Even if it was an on-duty injury, he failed to execute the proper reports at the time of the injury.

The Board believes that the Claimant's hands are not clean. Even if he was uncertain about the cause of his injury on April 16, he was required to immediately advise his supervisor and file an injury report. His vacillation about reporting the place and cause of his injury casts some doubt on his credibility. The Board is caused to question his forthrightness.

But the Carrier's hands are not clean, either. The Parties have agreed, in their formalized Agreement, that an employee alleged to be at fault shall be apprised of the circumstance or matter to be investigated. This is not a mere technicality, as the Carrier suggests. It is fundamental to ensure fairness and a proper defense. True enough, in this case, as the Carrier argues, it seems that the Claimant's defense was not impaired. That hardly permits this Board to waive the procedural elements of the Claimant's due process rights, however.

The Board notices that Mr. Theret's disciplinary decision following the investigation, written on July 26, 2002 (quoted on page 3, above), atypically fails to specify the date of the alleged infraction. While allowing that this may have been another typographical error, the Board must also admit the possibility that the attention given to the erroneous date of the alleged infraction may have influenced the decision to omit a date in Mr. Theret's letter. Neither is the Board impressed by Mr. Silva's tepid explanation for the date discrepancy at Transcript page 14: "[B]ecause it started at 10:30 p.m. because it carried over from the 1st to the 2nd."

Arbitrators attach considerable importance to contractual due process provisions concerning the procedures that employers must follow in disciplining employees, particularly when the consequence is dismissal. At the same time, arbitrators hesitate to negate a penalty entirely because of procedural irregularities if they are satisfied the result is not a substantial injustice to the employee. In most cases, arbitrators take the procedural violation into account in assessing the appropriateness of the penalty, but do not declare the entire action a nullity.

This Board is persuaded that the Claimant, on May 1, 2002, filed a false report of the injury supposedly suffered on April 16, 2002, after he failed to substantiate that he suffered the injury on duty. His uncertainty about reporting it on April 19 and April 22 casts doubt on how, when, why, or even whether it occurred.

The Board has considered this employee's personal record. He is a relatively new employee, with only 7½ months' service. On the other hand, he has no prior disciplinary entries, no surprise for an employee with little longevity. The Board is caused to speculate that the Carrier's decision may have been colored by the series of purported injuries within less than two months – off duty on March 3 – on duty March 18 – on or off duty on April 16 – on duty May 1.

Dismissal for a first offense is uncommon, except in the moist egregious cases. Theft, incarceration, false payroll entries, and similar acts of moral turpitude are such examples. In the doubtful circumstances of this case, unproven by clear and convincing evidence, and with the procedural irregularities discussed above, the Board believes that the unclean hands of both the Carrier and the Claimant warrant a disciplinary decision less severe than dismissal. The dismissal shall be reduced to a nine (9) month suspension, commencing July 26, 2002, the date of the letter advising him of his dismissal. The Claimant shall be reinstated with seniority and all other rights unimpaired, and paid for time lost in excess of nine (9) months from the date of his dismissal on July 26, 2002.

AWARD

The claim is sustained in accordance with the Opinion. The Carrier shall comply with this Award within forty-five (45) days from the date of this Award.

Robert J. Irvin, Neutral Member

R. B. Wehrli, Employe Member

Thomas M. Rohling, Carrier Member

June 13, 2003
Date