

PUBLIC LAW BOARD NO. 5696
AWARD NO. 16
CASE NO. 16

BURLINGTON NORTHERN RAILROAD

PARTIES
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. R. D. Balch was unjustly suspended from service for ten (10) days beginning December 28, 1994, through January 6, 1995, for allegedly not accurately filing a personal injury report when he alleged an on-duty injury.
- (2) As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost and the discipline shall be removed from his personal record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was a trackman who commenced employment on September 13, 1993, and was working on a regional steel gang when he sustained an injury on July 13, 1994. He was suspended for ten days in December, 1996 for failing to timely report that personal injury in violation of General Rule 1.2.5. That rule, effective September 1, 1994, states, in pertinent part:

Reporting Injury to Employees

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 January 12, 1995 investigation reveals that Claimant reported to his Roadmaster, Randy McQueary, that he felt pain on the left side of his neck running down to his middle back on July 13, 1994. When the pain became worse a few days later, Claimant informed Gang Roadmaster Hood of what had occurred, and was told that Hood will fill out the necessary First Aid report. The record reflects that Hood faxed a First Aid Notification form to Roadmaster Smith in St. Louis later that week, indicating the nature of Claimant's injury and that he had not visited the doctor.

Smith explained that a First Aid Report is completed and kept in a log book if an injury is not serious, but that once it is determined that an injury is serious, a Personal Injury Report is required. Smith testified that Claimant came to work for him in St. Louis on September 6, 1994 and never discussed his injury. Smith noted that the first Personal Injury Report filled out by Claimant regarding his July 13, 1994 injury was dated December 28, 1994, and the delay in which it was filed is the basis for his

receipt of the suspension in dispute. Smith testified that an employee is supposed to fill out a Personal Injury Report at the same time as the supervisor fills out the First Aid Notification. He stated that Claimant was at a safety meeting on October 28, 1994 where the reporting of personal injuries was discussed.

Claimant testified that the reason he filled out the Personal Injury Report on December 28, 1994 was because his insurance claim agent told him that he needed to. He stated that he was never told that he should fill out such a form when he reported his injury, and Hood informed him that he would fill out the forms needed. Claimant explained that although he did not pass his Rules test, he was aware that all on-duty injuries had to be reported to his supervisor immediately and the proper form completed. Claimant testified that, to the best of his knowledge, he complied with that requirement. He was unaware of the Personal Injury Report form in July, 1994, and did not learn of its necessity until he met with his agent in December.

The record reflects that Claimant worked most days between July 13 and December 15, 1994, when he called off to go under doctor's treatment. His medical data reveals a visit to the chiropractor on July 14, and treatment for his neck and back between December 19 and 28, 1994. At the time he filed his Personal Injury Report, Claimant was off work and, apparently, processing a medical insurance claim.

The Organization contends that Claimant did not violate the cited Rule since he reported his injury immediately to his supervisors and the proper forms were filled out. The Organization points to the fact that the

First Aid Notification instructs that a Personal Injury Report is only required to be filled out by the employee when the injury becomes FRA reportable. The Organization argues that there is no evidence to indicate that Claimant's injury ever reached that stage.

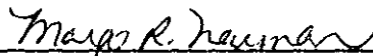
After full consideration of all of the facts in this case, this Board is of the opinion that the discipline in issue cannot stand. There is insufficient evidence in the record to support the Carrier's conclusion that Claimant failed to file the prescribed form or report to his manager in a timely fashion as required by Rule 1.2.5. Rather, Claimant reported his injury to his immediate supervisor, and the proper First Aid form was filled out, kept in the log book and faxed to the Roadmaster in St. Louis. That form itself indicates that no other forms are necessary until the injury becomes FRA reportable. Carrier failed to prove when Claimant's injury fell within that category, and the record reveals that he worked consistently between July 13 and December 15, 1994.

Further, there was no showing that Claimant was notified at any time prior to December 28, 1994 that he was required to fill out a Personal Injury Report concerning his neck and back. He was informed by his supervisor that he would fill out the appropriate First Aid form, and was not instructed to complete any other paperwork. There is no evidence that the October 28, 1994 safety meeting specifically instructed employees that Personal Injury Report forms always had to be filled out by them at the time of the initial injury report, regardless of its seriousness. In fact, Rule 1.2.5 does not specify what the "prescribed form" is. Absent proof that Claimant had notice that this particular form was required for the injury

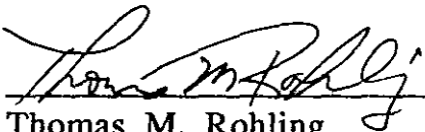
he reported to supervision on July 13, 1994, and based upon the particular facts in this case indicating prompt reporting of the injury to supervision and the filing of a report form which appears to be appropriate on its face, the Board cannot find that Carrier sustained its burden of proving the Rule violation for which Claimant was suspended.

AWARD:

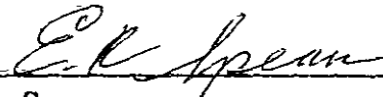
The claim is sustained. Claimant shall be paid for all time lost and the ten day suspension shall be removed from his personal record.



Margo R. Newman
Neutral Chairperson



Thomas M. Rohling
Carrier Member



E. R. Spears
Employee Member

Fort Worth, Texas
January 22, 1997