

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 118

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level S Suspension for thirty (30) days from service for D. J. Villegas 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 11:30 a.m. May 6, 1999 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.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, on March 31, reported an injury allegedly incurred on March 29.

Because of the late reporting, he was cited for violating a number of rules, and on May 6, 1999, after several postponements, the investigation was held, resulting in Claimant being assessed a 30 day actual suspension.

During the investigation, Carrier's Supervisor testified that no injury was reported to him on the 29th, that on the 30th he had talked with Claimant following a monthly safety

meeting and Claimant did not then report an injury, nor did he refer to the incident that he believes was the cause of the injury.

On the 31st, Claimant called his Supervisor early at the start of the day to report he was not coming to work because of the injury. Claimant later came in and filled out the injury report contending a lower back injury (soft tissue damage) occurred when he slipped and fell backwards while cleaning out underneath a switch. He contended he did not fall far as he was in a crouched position doing the cleanout work.

Claimant testified he worked all of the 29th and the 30th without experiencing any physical pain or restriction, but this testimony is somewhat a puzzlement to this Board, particularly in regards to the 30th. On this day, Claimant was in an all day meeting which included safety matters as well as a truck inventory. On the 30th, he did not function as he usually did, yet his fellow car pooler testified that on the 30th, Claimant asked him to drive home. (Claimant drove both to work in Claimant's truck.) The fellow car pooler further testified that upon arriving at Claimant's home, he assisted Claimant by carrying his gear to his home.

To this Board, it is obvious that Claimant must have been hurting by the end of the day, yet he said nothing to his Supervisor. Claimant may have been in the dark as to the cause of his physical problem until his discussion with the attending emergency room physician later in the evening of the 30th, but Claimant did know he slipped and that he suffered some pain to the tail bone.

Why he did not at least relate the incident to his Supervisor the afternoon of the 30th when they were having a one-on-one conversation in the parking lot is a factor only Claimant knows, but after spending the better portion of the day in a safety meeting, wherein the

Supervisor was talking about being injury-free for a period of time, perhaps Claimant felt constrained in reporting the fall when he perhaps was not sure that the fall was the cause of his problem.

Nevertheless, Claimant has been a Foreman since August, 1972. During this period, he has attended many safety sessions. In fact, his record shows that on March 30, 1998, he attended a safety meeting and this was shortly after the Carrier placed emphasis on reporting every strain, pain, ache or twinge when it happens.

To this Board, Claimant was derelict in not reporting the incident when it occurred even though, at the time, it did not restrict his physical activities, but the discipline assessed, 30 days out of service, is more than is necessary especially when it involves an employee with no disciplinary problems in his 29 years of service and who has suffered only three injuries in this period of time.

The thirty days out of service will be reduced to ten days. Claimant is to be paid for all time lost in excess of ten days as provided in the existing contract.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

Robert L. Hicks

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli

Rick B. Wehrli, Labor Member

Thomas M. Rohling

Thomas M. Rohling, Carrier Member

Dated: November 9, 1999