

PUBLIC LAW BOARD NO 5850

**Award No.
Case No. 136**

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 suspend Welder C. W. Eldon from service was unjust.
2. That the Carrier now reinstate Claimant Eldon with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of an investigation held 10:00 a.m. December 2, 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, removal 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.

On September 24, 1999, Claimant filed an injury report contending that at about 7:00 or 8:00 PM on September 23, 1999, he felt he was being stuck with a pin

in his back when he stood, bent or twisted a certain way.

He indicated on the report that he thought the injury might have occurred when he was carrying 136 lb. molds over less than a smooth service about 20 or 30 yards with no dolly available.

An Investigation was scheduled to be held on October, 18. At the request of the Organization, the Investigation was postponed until October 27, 1999. On October 22, the Organization requested another postponement indicating that Claimant would not be available on the date scheduled because of his medical treatment and medical appointment. The new date was December 2, 1999.

The Investigation was held on December 2, 1999, without Claimant in attendance. In fact, it was held up for better than an hour waiting for some word from Claimant, i.e., whether he was en route, whether he could not attend because of a physical disability or whatever. Claimant did not contact anyone regarding his not being available on December 2, 1999.

The Investigation commenced over the objection of Claimant's representative's request for a postponement.

Board decisions have held that Claimant has the option of attending the Investigation, but should he choose not to attend, he does so at his peril as the Carrier witnesses' testimony will stand unrefuted.

It developed during the Investigation that the molds weighed only 50 lbs., not

the 136 lbs. Claimant reported on the injury report. It also developed that Claimant could have used the company truck to move the molds closer to the storage shed, or he could have requested a dolly. Carrier stated they would not have had an objection thereto even if one was bought. In other words, Claimant, in Carrier's view, did not maintain a safe course, nor did he follow safe lifting practices when he did not request assistance or stop to obtain the mechanical means necessary to complete the task.

It is also noted that Claimant was under the jurisdiction of a Welder, and this Welder testified Claimant did not complain that the carrying of the molds was unsafe or that he should have a dolly to accomplish the movement.

The Carrier has furnished sufficient evidence to establish Claimant's culpability, but to this Board a thirty day actual suspension to a fairly new employee is somewhat harsh. The 30 day actual is reduced to a 5 day actual suspension. Claimant is to be made whole for any time he may have lost as provided for in the Agreement.

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

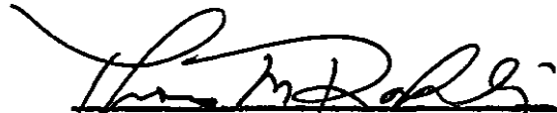
the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: June 9, 2000