

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 176**

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on February 7, 2001, the Carrier issued a Level-S, 30-day record suspension to Mr. M. H. Tovar for his alleged insubordination following his allegedly failing to comply with written instructions issued to him on August 9, 2000.
2. As a consequence of the Carrier's violation referred to above the discipline shall be removed from Mr. M. H. Tovar's personal record and he shall be compensated for all wages lost, if any, in accordance with the Agreement.

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 August 11, 2000, the Carrier notified Claimant of an investigation as follows:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with alleged failure to report injury as per conversation with Dave Kitchen, August 9, 2000 or furnish information relative to injury and failure to comply with written instructions from Roadmaster R.L. Ramsey and Assistant Roadmaster M. Sheets dated August 9, 2000 to provide reports as required, possible violation of Rules 1.2.5, 1.2.7, 1.6 NO. 3, and 1.13 of the Maintenance of Way Operating Rules, effective January 31, 1999, as revised."

The investigation was finally held January 10, 2001, following which Claimant was assessed a record suspension of 30 days.

The basics are that on August 8, 2000, Claimant apparently slipped on a loose stone in the ballast and twisted his knee. Claimant's injury was not witnessed by anyone that saw his fall, but others saw him laying on the ground. He got up with assistance, advised the Foreman he thought he was alright. He did not request to see a doctor.

That evening he contacted his Foreman and related he had seen a doctor who advised him to stay off his feet until their next appointment. The next morning, the Foreman relayed Claimant's condition to his Supervisor who in turn reported to his Supervisor.

Claimant, at this point, had not completed an "EMPLOYEE PERSONAL INJURY/OCCUPATIONAL ILLNESS REPORT" so a Roadmaster and an Assistant Roadmaster went to Claimant's home after receiving prior approval to do so, seeking Claimant's cooperation in completing the injury report and one other document. Claimant asked that the forms be left and he would fill them out as he stated he wanted to take his time to assure what he said was correct. The Roadmaster agreed, allowing Claimant a 24 hour window and instructing Claimant to complete the forms and advise either one of them who then would retrieve the documents from Claimant.

Claimant did not return the forms to either Roadmaster within 24 hours, but he did mail same to the Division Engineer. Thus, the charges as set forth earlier in this Award.

Claimant admitted he knew of the Rules requiring his filing of an injury report. He also knew that the Carrier did investigate each injury in an effort to perhaps correct the manner in which work was done, to alter policy, to perhaps even rewrite safety rules, etc.

The effort is to provide the safest place to work injury-free.

Nevertheless, Claimant was reluctant to cooperate at the outset, thwarting Carrier's efforts to determine what happened.

The second form requested of Claimant was apparently a medical release that according to the Organization was too broad in application that the doctor or any doctor knowing of Claimant would be free to divulge a medical history going beyond the claimed injury.

The Organization argued that Claimant advised the visiting Roadmasters that the release of medical information as protected by the Rules of Discovery and was illegal since Claimant had advised them he was being represented by an attorney.

This Board's authority is set forth in the Railway Labor Act and it authorizes Neutrals only to interpret and apply mutually agreed to Rules and Understandings. If the information sought was improper for some legal reason, that is solely a matter for a forum other than the case before this Board.

The requirements of immediately reporting an injury and completing the prescribed form is known to Claimant. In lieu of notifying either Roadmaster that he filed the report with the Division Engineer, he kept silent. He did complete the report, but the Carrier was not aware until August 11, 2000, when the Division Engineer received for the report of the how, when and where Claimant sustained the injury.

There was some discussion whether Claimant had 72 hours to file his report, as that is the advice he received from the Foreman but that advice flows only to the so-called first aid report covering bruises, contusions, etc., that are not serious enough to result in lost time.

After reviewing all the written material and the transcript, it is evident that Claimant did not cooperate with the Roadmasters in determining the material facts of how the injury occurred and failed to timely file an injury report as instructed. But there is no penalty for his alleged failure to complete the so-called medical release form that was not furnished as evidence in the investigation.

Claimant had 29 years with the Carrier as of the date of injury with no disciplinary problems since October, 1981. Under the circumstances, the discipline assessed is reduced to a written reprimand eliminating therefrom any reference to a second form. If Claimant lost any time as a result of this claim, he is to be compensated as provided in the Schedule Agreement.


AWARD

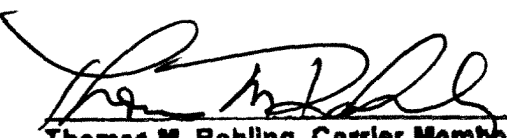
Claim sustained in accordance with the Findings.

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: October 22, 2001