

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former  
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on June 8, 2001, when it issued Mr. D. L. Sanders, a 30-day record suspension for allegedly violating Maintenance of Way Operating Rules 1.2.7 and 1.8, for failing to report all the facts concerning an injury.
2. As a consequence of the violation referred to above, the Carrier shall remove any mention of the incident from Mr. Sanders' personal record, and make him whole for any wages lost, per 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 June 29, 2001, the Carrier wrote Claimant setting up an investigation to determine his responsibility, if any:

"...in connection with your possible violation of Rules 1.1.1, 1.1.2, 1.2.7 and 1.6 of the Maintenance of Way Operating Rules, in effect January 31, 1999 as supplemented or amended, including revisions up to April 2, 2000.

This investigation is concerning your claim of on duty personal injury, occurring on or about Friday, June 8, 2001, while working as Truck Driver on Littlefield Section."

On September 7, 2001, the Carrier wrote Claimant that as a result of investigation held on August 10, 2001, Claimant was being assessed a 30 day record suspension for violation of Rules 1.2.7 and 1.6 of the Maintenance of Way Operating Rules while assigned as a truck driver on June 8, 2001.

Rule 1.2.7 is the critical Rule and has reference to withholding information. Rule 1.6 comes into play only if he is found culpable of violating Rule 1.2.7.

The withholding of information is based upon Claimant's reactions to experiencing a sore back on Friday, June 8, 2001. He told his Foreman his back was sore before he went home, but cautioned the Foreman not to pass the information in. It just may be nothing.

On Sunday, June 10, 2001, he called the Foreman informing him that on Monday he was seeking medical advice relative to his back, whereupon Claimant did not request it be kept secret any longer.

The Board finds that Claimant did nothing other than telling his Foreman about his back and if the ache went away, that would be that, but if he would seek medical attention he would tell the Foreman. Since that time, Claimant has answered all the questions asked promptly and up front. This the Carrier, the Board believes, finds refreshing but the Carrier has a 72 hour window frame for just soreness, aches, cramps, etc., that may occur that may be relieved by a hot soak and some over-the-counter pain medication. Claimant should have reported his ailment under the 72 hour window, then when it became necessary to seek medical relief, change the soft tissue report to the actual injury report.

Under these circumstances, the Carrier has substantiated a violation of Rule 1.2.7

did occur; thus the discipline is found to be appropriate.


AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

  
Robert L. Hicks, Chairman & Neutral Member

  
Rick B. Wehrli, Labor Member

  
Thomas M. Rohling, Carrier Member

Dated: September 30, 2002