PUBLIC LAW BOARD NO. 5850

Award No.
Case No. 249

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes

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

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement on July 31, 2003, when it issued the Claimant, Mr. R. E. Oiler, a 30-day record suspension for allegedly violating Maintenance of Way Operating Rules 1.2.5, and 1.13, for failing to follow instruction and not timely reporting an injury.

2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove any mention of this incident from the Claimant's personal record and make him whole for any wages lost account of this alleged violation.

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 27, 2003, the Carrier advised Claimant an investigation was being scheduled to determine his alleged threatening remark concerning a possible personal injury and failure to promptly report an injury that occurred June 23, 2003.

Following the investigation, Claimant was timely advised that Carrier believed it had furnished sufficient evidence to support one charge and for that one charge Claimant was assigned a level S record suspension of 60 days with a three years

probation period.

The one charge dropped by the Carrier was that of making a threatening remark to another employee of the Carrier.

Accordingly, the only charge before this Board that Carrier believes it had furnished sufficient evidence of culpability was the alleged late reporting of an injury that was reported to have occurred on June 23, 2003.

For the record, it is noted the injury report was filed on June 25, 2003, relating to an incident that occurred at about 9:00 AM on June 23, 2003.

Carrier's policy titled "Employee Performance Accountability" sets forth in pertinent part the following:

> "d. Muscular-skeletal injuries are not subject to late reporting investigation, as long as they are reported within 72 hours of the probably triggering event and medical attention verifies that the condition is most likely linked to the event specified. Employees must notify their supervisors before seeking medical attention for such injuries...."

On June 25, 2003, Claimant notified his Supervisor of his need for medical services. Thus, it is evident Claimant was in full compliance with the aforequoted excerpt. But, this record is not that easy to adjudicate. Claimant, in a letter dated June 30, 2003, he co-signed with his Representative directed to the Division Engineer, requested the injury report be withdrawn and in lieu a new injury report be filed reflecting the injury was a result, "of repetitious work."

This jointly signed letter was never responded to or even remarked upon after it was written prior to the investigation after it was included in the investigation by Claimant's Representative, nor even during the on-property handling after the grievance was filed wherein the co-signed request was again referred to.

The jointly signed letter simply requested the Carrier to change the cause of the injury. It did not change anything else, thus Claimant on June 25, 2003, filed an injury report reporting to an action that occurred on June 23, 2003, well within the 72 hour window for filing such claims.

The Carrier's evidence is the testimony of others that Claimant complained of a sore right arm prior to June 23, 2003. He may have been complaining of a sore arm but there was also testimony that others have complained of aches and pains that follow strenuous work as encountered by Claimant. That type of testimony is not specific, and to clearly prove the charges the Carrier would have to furnish specifics of an incident in order to hold that Claimant was late in reporting an injury that did occur prior to June 23, 2003. This they have not done.

The claim is sustained. All traces of this matter are to be erased from Claimant's record. If Claimant has lost any earnings because of this incident other than time lost because of the Medical Department, he is to be paid as provided 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

William L. Yeck, Carrier Member

Dated: 7-9-04