

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 48

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to issue a Level "S" Suspension for Eastern Region Track Supervisor M. L. O'Connor from service for thirty (30) days was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, transcripts and pay for all wage loss as a result of an investigation held 9:00 a.m. June 17, 1997 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 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.

After being off for several days because of a painful left shoulder, Claimant, on May 30, 1997, filed an injury contending that on July 15, 1995, at about 0930, while tightening a guard rail bolt the washer snapped causing Claimant to fall to his knees.

Because the injury was not reported promptly, the Carrier set up an investigation to ascertain "the facts and determining your responsibility, if any, in connection with your alleged late report of an on-duty injury that occurred July 15, 1995...."

Following the investigation, the Carrier, believing it had established sufficient evidence of Claimant's culpability for the charges, assessed Claimant a 30 day actual suspension.

After reviewing the transcript, the Board concurs with Carrier's assessment of culpability. Claimant knew full well that he had sustained an injury when the guard rail bolt snapped while he was tightening same. In fact, he found it necessary to seek assistance from a Signaller working in the territory to set off his truck. Claimant was fully cognizant of the obligation to report any injury immediately. He testified that he didn't report same immediately as he believed the Carrier's reaction to any injury report was intimidating, and that he only reported the injury when he felt the injury was impeding his job performance of which the Carrier was critical.

The Carrier has an obligation to provide as much as is possible, a safe working environment and when an injury occurs, the demand for prompt reporting is not an arbitrary, capricious act but one of a necessity to investigate and to take corrective action. In this instance, perhaps the washer used in this instance was defective and it may have been only one from a batch or there may have been more, but by not reporting the injury promptly, the Carrier lost the opportunity to investigate.

This Board can find no circumstance to overturn or modify the discipline assessed. The claim will be denied.

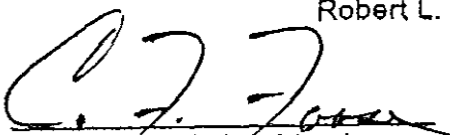
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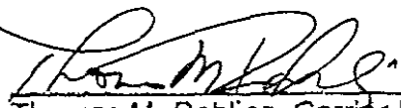
Claim denied.

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


C. F. Foose, Labor Member


Thomas M. Rohling, Carrier Member

Dated: