

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 issue a Level One (1) - Formal Reprimand for Central Region, David P. Anderson was unjust.
2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held 9:00 a.m. October 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 the Claimant violated the rules enumerated in the decision, a Formal Reprimand 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 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.

Claimant, while loading tie plates on the back of a truck stated he noticed a "twinge" to the right shoulder. He testified that he completed loading and the day's work with no further discomfort other than some muscle soreness until about an hour or two after he completed work. He stated he stopped off at the home of his future in-laws, stayed about one hour, then hopped into his truck for the drive home. His truck is stick shift on the floor and it was, in shifting, that the pain occurred in his shoulder to the extent he experienced difficulty in shifting. At 6:15 PM, Claimant reported the injury and sought medical help. The diagnosis was bursitis in his right shoulder.

Because Claimant did not report the injury at 9:00 AM when he felt the first "twinge," the

Carrier offered Claimant the opportunity to waive an investigation in lieu of accepting a record mark.

Claimant refused to settle for a record mark, hence the current investigation, following which the Carrier assessed Claimant the same record mark he had refused to accept without an investigation.

On Page 24 of the transcript, questions by Claimant's representative and answers by Carrier's witness:

- "Q. Is it your position as a supervisor that all sore muscles and aches should be reported immediately?
A. That's entirely up to the individual.
- Q. When is an employee required to report soreness or possibly maybe an injury?
A. Before the close of shift.
- Q. And what rule would that be or what guidance would an employee have to rely on that?
A. I think it's in the General Responsibilities for Employees, which has been given to Mr. Anderson and all of our employees.
- Q. Is it one of the rules cited in the investigation that you're aware of?
A. I believe Mr. Charrow did mention it.
- Q. Is it 'Reporting', ***? Rule 1.2.5. We read this earlier, and I'd like to, for the indulgence of the committee, go through it again, if it's okay with the chairman. It states, 'All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed.' Is there anywhere in that rule that states, 'before the end of shift', ***?
A. No, Sir."

Under the circumstances, at the first instance that the "twinge" was actually a perceived injury, Claimant did promptly report it to his Foreman.

It is understood, and this Board has so noted, the necessity of reporting injuries promptly which enables the Carrier to promptly respond, and when an ache manifests to the extent it limits the physical activities of an employee, it becomes an injury, and at that time prompt reporting is required. See Case No. 7 of this Board which is on point.

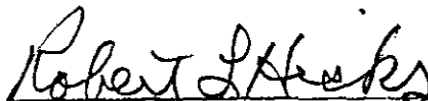
The Carrier has not established substantial evidence of Claimant's culpability for the charges assessed. All traces of this Investigation, including the record mark, are to be deleted from Claimant's record. The claim will be sustained.

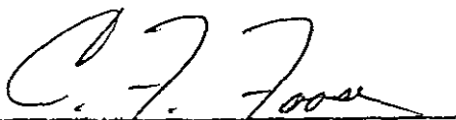
AWARD

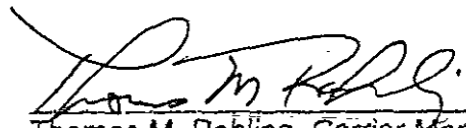
Claim sustained.

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


C. F. Foose, Labor Member


Thomas M. Rohling, Carrier Member

Dated: December 22, 1997