

PUBLIC LAW BOARD NO 5850

Award No.  
Case No. 67

(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 System Steel, Johnnie L. Kaye from service for 20 days 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 Investigation held 9:00 a.m. February 19, 1998 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, 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.

Claimant on February 19, 1998, while unloading some oxygen and acetylene bottles, suffered an injury to his thumb when it got caught between the bottle and the tailgate.

After an enactment of what Claimant did when unloading the truck, the Carrier served notice on Claimant of an Investigation citing him for violating various Rules because of his alleged failure to follow instructions, failure to be alert and attentive when performing his duties, failure to perform his duties safely and failure to conduct a proper job briefing which led to his injury.

After the Investigation, Claimant was assessed a 20 day actual suspension from service.

When reviewing the transcript it was thought, at first blush, that Claimant was a 23 year veteran who had never attended an investigation before and who had never sustained an injury before, but a review of Claimant's work record reveals what he has said is clearly misleading but perhaps not untrue.

Claimant does have roughly 23 years of service, but not continuous. He hired out in June, 1973, and resigned in August, 1973. Rehired in March, 1976, and resigned in January, 1986, and rehired in June, 1991.

He had no injuries since his last hire date, but in January, 1985, he incurred bruises and contusions. Regarding his statement that he had never been at an investigation before, may also be true, but prior to this incident he had been disciplined four times between September, 1996 and July, 1997. If he had never attended an investigation before, he must have waived his rights thereto and accepted the discipline offered in each prior incident.

At the investigation, it was conclusively established that:

1. Claimant moved the truck when he was told to sit tight.
2. He did not clean the cab.
3. He did not wait for the Supervisor's job briefing before he unloaded the cylinders.
4. He was inattentive when unloading the cylinders leading to his injury, and
5. Held no job briefing prior to unloading the cylinders.

Claimant cannot be faulted for the manner in which the cylinders were unloaded as he testified, without rebuttal, that the method used in this instance was no different than the method followed previously and was done without complaint, but this is not enough to offset all the other violations he was responsible for.


AWARD

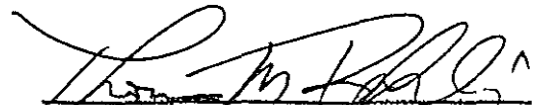
Claim denied.

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: