

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 69

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 1 Formal Reprimand for Central Region, N. Nalwood and J. L. Lopez 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 17, 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.

Both Claimants were assessed formal reprimands that are to be retained in their work records. Claimant Nalwood is a Lead Welder with 28 years of service with the Carrier with a clear record, and Claimant Lopez commenced working in March, 1996, with only one prior record entry to date.

On Friday, January 23, 1998, Claimant Lopez tripped over some equipment and fell. Claimant Nalwood knew about the fall, but Claimant Lopez at that time did not believe he had suffered an injury, contending he only was sore from the fall.

The Lead Welder, at about 3:30 PM, called his Supervisor at his office, leaving a phone mail message regarding his assistant's fall. At about 6:30 PM Friday evening, Claimant Lopez called the Division Engineer to report the accident, but did not then request medical attention. However, shortly after midnight on Saturday, Claimant Lopez sought medical attention from a hospital emergency room and subsequently from a Company Doctor on Monday.

The charge to each Claimant was that each "failed to properly report injury."

The Rules cited as to have been violated read as follows:

"S-28.1.3 Accidents, Injuries, and Defects

Report by first means of communication any accidents; personal injuries; defects in tracks, bridges, or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the accident.

S-28.2.5 Reporting

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.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. The injured employee must also complete the prescribed written form before returning to service.

S-28.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."

Claimant Lopez's immediate Supervisor in the field was the Lead Welder, Claimant Nelwood. The Lead Welder did know of the incident and did report same via phone mail to his Supervisor.

Because the assistant did not require medical attention, the Lead Welder did not, at 2:30 PM when his assistant fell, report the incident, but did so near the end of his shift at 3:30 PM. The

Lead Welder was not aware that his assistant suffered to the degree he did, and obviously believed he had complied with the Rules.

The Carrier witness, when questioned by the Claimant's representative as to the requirement of the Rules in incidents such as this, stated that:

"...A. There's a Carrier rule, Sir, that says that any time an incident of injury or injury is reported, they're supposed to report it to the supervisor of the territory before the work shift ends...."

The only fault of the Lead Welder that is evident is that he did not try to track down his Supervisor via whatever means possible to report what he believed to be a minor incident. The assistant did comply when he reported it to his immediate Supervisor, the Lead Welder, and then when he again reported it to the Division Engineer Friday evening when the soreness really started to bother him.

In reviewing the Rules cited and analyzing each in view with what occurred, the Board finds that neither Claimant was in violation. Both complied with the literal intent of the Rules.

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 postmark date the Award is transmitted to the parties.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated.