

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 7

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE:

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to suspend Eastern Region Maintenance of Way employee B. E. Hernandez from January 2, 1996, through January 23, 1996 was unjust.

Accordingly, Carrier should now be required to expunge the suspension from the claimant's record and compensate him for all wages lost from January 2, 1996 through January 23, 1996. (Files 02-15-AB/50-13113-9518)

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 was cited for an Investigation to determine his responsibility for failure to report an injury promptly.

Claimant contends he experienced severe soreness in his hip on December 20, 1995, and reported it to his Foreman during lunch on the same day.

The Foreman testified he had no recollection of such a conversation on December 20, and the first he became aware was on December 21 when Claimant advised him at the start of the day that he had a problem.

The Safety Rules stress reporting of injuries or accidents immediately to the proper manager. In this instance, the proper manager would be his Foreman.

During the Investigation, Claimant's representative asked Claimant's Supervisor if he thought every instance of discomfort should be reported, and the response was "...if they choose to report it as an injury, it has to be reported...."

Because Claimant's soreness manifested itself into a cramped back muscle, causing aggravation and physical discomfort, but was reported to his Supervisor the next day, Claimant was charged with and disciplined for filing a late report.

If Claimant's soreness dissipated with a hot bath and two aspirin, there would not have been a late report, nor any hearing. Not every soreness or muscle ache turns into an injury.

When Claimant's "soreness" manifested into a stiff back muscle hampering his ability to give 100%, he reported the injury. He did so when it became an injury.

As the Supervisor testified, "...if they choose to regard it as an injury, it has to be reported...." When Claimant's soreness became an injury, he reported it immediately.

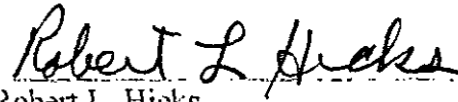
Under these circumstances, the discipline is to be expunged from Claimant's record, and he is to be paid for all time lost as provided in the Agreement.

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 and Neutral Member



C. F. Foose
Labor Member



Greg Griffin
Carrier Member

Dated 8/19/96