

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 144, (Case No. 144)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

**William R. Miller, Chairman & Neutral Member
Joy E. Mendez, Carrier Member
David D. Tanner, Employee Member**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing April 18, 2013, when Claimant, Dwite D. Sharp (1502699), was disciplined with a Level S 30-day Record Suspension with a 1 year review period for his alleged failure immediately report an on-duty personal injury at milepost 111.2 on the Emporia Subdivision at approximately 1100 hours on March 26, 2013. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.2.5 Reporting.**
- 2. As a consequence of the violation referred to in part 1 the Carrier, shall remove from the Claimant's record this discipline and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing April 18, 2013, continuing forward and/or otherwise made whole."**

(Carrier File No. 14-13-0250) (Organization File No. 50-SF1313-133)

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On April 5, 2013, Claimant was directed to attend a formal Investigation on April 18, 2013, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to immediately report an on duty

personal injury, MP 111.2, Emporia Subdivision, at approximately 1100 hours on March 26, 2013. The date BNSF received first knowledge of this alleged violation is April 1, 2013.

This investigation will determine possible violation of MOWOR 1.2.5 Reporting."

On May 16, 2013, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a one year review period.

It is the Organization's position that the Carrier erred in disciplining the Claimant. It argued that the Claimant was denied his "due process" Agreement rights because the Organization Representative was not furnished a copy of the transcript of the Investigation in a timely manner. It argued that the Investigation was held on April 18th and a copy of the transcript was not furnished the Organization until May 20th or 32 days after the Hearing thus the Carrier failed to meet the 30 day time limit as determined by an on property Award concerning the issuance of transcripts, and on that basis alone it reasoned that the claim should be sustained without reviewing the merits. However, if the Board chose to examine the merits it would discover that the Carrier did not meet its burden of proof. It asserted that the record shows that the Claimant on March 26, 2013, while welding a frog, had a hot welding splatter ball get caught between the Claimant's pants and the top of his legging on his right leg that burnt a hole through his pants burning a small crater the size of a BB in his leg. At the time of the incident it did not bother the Claimant and he disregarded it because as a Welder it was not an uncommon occurrence. According to the Organization the Claimant did not experience any pain until March 29th when the injury became infected and he went to an Emergency Room for treatment. It pointed out that the Claimant testified he subsequently reported the injury on his first day back to work which was April 1, 2013. The Organization concluded that the Claimant reported his injury in a timely manner after he realized the extent of his injury. It requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the Organization's assertion that the Carrier had failed to furnish the Claimant's Representative a copy of the transcript in a timely fashion was in error because Rule 13(e) of the Agreement is specific as it does not show a 30 day time limit as suggested by the Organization. Additionally, it asserted there is arbitral precedent on the property that defines "notify" as the time of dispatch, not the time of receipt (See Third Division Award 32727). Turning to the merits the Carrier argued that Roadmaster T. Lyons testified that the Claimant was injured on March 26th, and he went to the doctor on March 29th and he did not fill out the Employee Personal Injury Form or notify his Supervisor until April 1st. It further argued that the Claimant admitted in his testimony that he did not attempt to call his Supervisor on any of the days following his injury and/or treatment of that injury. It concluded the discipline was appropriate and it asked that the discipline not be disturbed and the claim remain denied.

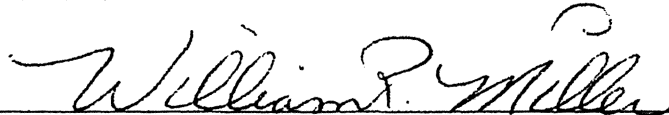
The Board has thoroughly reviewed the transcript and record of evidence and has examined the Organization's procedural argument and determined that Rule 13(e) - Stenographic Report of Investigation does not require that a copy of the transcript must be furnished the Organization within 30 days of the Hearing, therefore, the Board is not persuaded that delivery of the transcript in the Organization's hand on the 32nd day deprived the Claimant of his "due process" Agreement rights. The instant case will be resolved on its merits.

There is no dispute between the parties as to when the injury occurred or when it was first reported to the Carrier. The Board understands how the Claimant could have overlooked the injury as being inconsequential on March 26, however, by March 29th it was evident that the injury had become infected. Claimant could have alerted the Carrier on March 29 after being treated or on the weekend of March 30 and 31 at which time he could of asked whether it would be permissible to fill out the Employee Personal Injury Form upon his first day back to work. Claimant did not fill out the injury report or notify the Carrier until five days after the injury and three days after he knew the extent of the injury. Rule 1.2.5 - Reporting requires that all cases of personal injury, while on duty or on company property are to be reported immediately to Carrier management. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that the Claimant was guilty as charged.

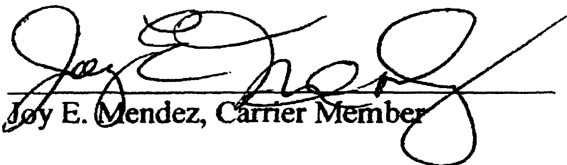
The only issue remaining is whether the discipline was appropriate. At the time of the offense Claimant had approximately 11 years of service with an unblemished record, however, Claimant's infraction was of a serious nature. The Board finds and holds that the discipline will not be disturbed and the claim will remain denied because it was not contrary to the Carrier's Policy for Employee Performance Accountability (PEPA), nor was it arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Joy E. Mendez, Carrier Member



David D. Tanner, Employee Member

Award Date: July 10, 2014