

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6986
AWARD # 4 CASE #4**

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employees

And

BNSF Railway Company

STATEMENT OF CLAIM

- “1. The Carrier violated the Agreement on May 18, 2006, when Claimant Larry R. Johnson was dismissed for failure to properly report personal injuries.
2. As a consequence of the Carrier’s violation referred to in part (1) above, the Claimant should be returned to service, paid for all lost time, and that all references to this incident shall be removed from Claimant’s personal record.”

**Carrier File No. 12-06-0060
Organization File No. B-1516-1**

FINDINGS

A review of the Records in this case indicates that the Claimant was notified to attend an investigation at 10:00 am for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly report personal injuries to yourself as outlined in correspondence received from the Claims Department.

The Investigation was held as scheduled in the Division Conference Room at the Carrier’s facility in Memphis, TN.

Public Law Board 6986
Case No. 4 Award No 4

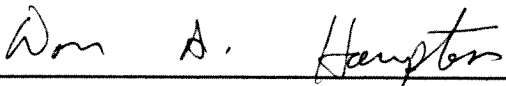
The Claimant was notified by letter dated May 18, 2006 that as a result of the formal investigation that he was hereby dismissed from the service of the Carrier for his failure to properly report personal injuries.

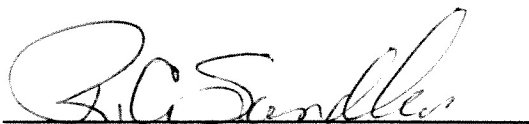
The Organization argues that in this particular instance the Claimant was unaware that he should fill out an accident report for the Carrier although the Claimant had followed the proper procedure on three (3) previous occasions.


In such a safety sensitive industry as this one it is imperative that the Carrier is notified of all injuries in a timely manner. That did not occur in the instant case. While we are cognizant of the Claimant's many years of service the Carrier's imposition of discipline is neither excessive or arbitrary. There is no basis, based on the record before, us to disturb the discipline levied by the Carrier.

AWARD

Claim denied in accordance with the findings


Don A. Hampton, Chairman & Neutral Member


R.C. Sandlin
Organization Member


Samantha Rogers
Carrier Member

DATED: 11 days 31, 2007

LABOR MEMBERS DISSENT
TO PUBLIC LAW BOARD No. 6986 AWARD #4, CASE # 4
Referee Don A. Hampton

The Organization is dismayed that a 30 plus year employee can be dismissed for, unknowingly, failing to fill out a form and that dismissal be upheld.

We must disagree with the Neutral Member's reasoning in this case. We do not believe the Neutral Member recognized the difference between an actual on the job injury and cumulative trauma type injuries. We also believe the discipline to be excessive and arbitrary.

The claimant had three (3) previous actual on the job injuries, occurring in 1982, 1991, and 1994. These injuries were trauma type injuries that occurred while working on the track which would have required prompt medical attention, therefore a report. The injuries the claimant failed to promptly report in this case were cumulative trauma that occurred overtime as a result of 30 plus years of track work. At what time would be considered reporting them in a "timely manner".

The discipline is excessive and arbitrary. The permanent dismissal of the claimant, given his years of service, his personal record and the nature of the charges, is equivalent to the government levying capital punishment for not promptly filing a tax return. Although the Neutral member did not rely on any award in his decision the carrier used a Third Division Award (Award No. 32406) to justify its discipline in this case. That award concerns an employee's seemingly blatant failure to report an actual on the job injury, caused by a defective track machine, that was not reported for six (6) days. In that award a five (5) day suspension was given, not permanent dismissal.

The claimant did not benefit by not filling out the accident form nor was the carrier deprived of anything of substance by the employee's failure to promptly fill out the form. Again, we must dissent.

Sincerely,



R.C. Sandlin
Labor Member

RCS/eb
cc: L. R. Johnson