SBA No. 1112
BNSF/BMWE
Case No. 11
Award No. 12

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1112

BURLINGTON NORTHERN/SANTA FE

AND **CASE NO. 11**
AWARD NO. 12

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

On July 29, 1998 the Brotherhood of Maintenance of Way Employes ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 ("Board").

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievance under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, and Organization Member, and a Neutral Referee, awards of the Board contain only the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railway Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or who have been censured may choose to appeal their case to this Board. The Employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further established that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of his/her desire for expedited handling of his/her appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of the proceedings and are to be reviewed by the Referee.

The Agreement further provides that the Referee, in deciding whether the discipline assessed

should be upheld, modified or set aside, will determine whether there was compliance with applicable provisions of Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assess was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

The Claimant, Anthony Robinson Jr., established seniority with the Carrier on June 29, 1992. His personnel record shows that on December 5, 1994 he was suspended for five days without pay because he was AWOL.

The Claimant was the subject of an investigation on March 9, 1999 for the purpose of ascertaining his responsibility, if any, in connection with an alleged violation of Safety Rules and General Responsibilities for all Employees, Rule 1.2.5. Following the investigation on March 31, 1999 Carrier issued a Level 1 Formal Reprimand to the Claimant for those alleged violations. Rule 1.2.5 of the Safety Rules and General Responsibilities reads, in relevant part, as follows:

Rule 1.5

> All cases of personal injury, while on duty or company property, must be immediately reported to the proper manager and the prescribed form completed.

FINDINGS AND OPINION

On November 2, 1998 while attempting to place a spike maul on the rack of a truck, the Claimant pinched his finger. He suffered some minor pain and was bleeding such that a paper towel was used to clean his wound and to compress the wound so that the bleeding would stop. Once the bleeding stopped he put a band-aid on the wound and informed his foreman of the incident. The foreman asked the Claimant if he needed to go to the hospital or required other medical attention, but the Claimant declined. The foreman than instructed the Claimant to evaluate the situation as the day went on and to notify him if he needed personal or medical attention. The Claimant then continued to work the remainder of the day and went home without any further mention to the foreman.

Later that evening the pain felt by the Claimant intensified and he sought emergency medical attention. An x-ray was taken of his finger and it was determined that he suffered a hairline fracture.

The following day the Claimant telephoned his foreman and explained to him what had happened the evening before. The foreman advised him to report the matter and the Claimant then completed and turned into the Roadmaster an Employee Personal Injury/Occupational Illness report which was the first time that anyone other than the Claimant and the foreman became aware of the situation.

The Organization contends that the discipline meted out in this matter must be overturned either because the Rule in question is vague or, if it is not, the Claimant did in fact comply with the rule. We disagree on both counts.

The Organization asserts that the Rule in question is vague because it no where defines a "personal injury." Therefore, when the incident in question occurred the Claimant reasonably concluded that he had no obligation to report the matter immediately particularly when he was able to work the remainder of his work day. However, there can be no question that the Claimant indeed suffered an "injury" to his "person" under any construction of those two terms. Moreover, to interpret those terms as the Organization suggests would require adding to them the phrase "that in any way affects employee performance," a role that we as the Board are not empowered to undertake. Finally, the record shows that when the Carrier intended to make a distinction between injuries that affect performance and those that do not, it chose to do so in the rule on reporting off-duty injuries.

On the second point, the Organization contends that because the Rule only required the Claimant to report the matter to the "proper manager," he met his obligation when, immediately after the incident he told his foreman. However, the unrebutted record evidence is that although the foreman is indeed the first individual in the chain of command, employees have been trained and instructed in safety meetings that in cases of personal injury they are to report the matter to the Roadmaster whether or not they have also informed the foreman. In the alternative, the Organization argues that the Claimant could not complete the reporting form because no such documents were available at the site of the incident. This argument fails however because the record shows that the necessary forms were available only ten miles from the scene. Finally, the Organization argues that the Rule requires that the injury must be reported Immediately but imposes no similar time commitment on filing the accident form. This argument fails however because to interpret the Rule as the Organization does would then require the Carrier to insert the word "immediately" before the clause imposing that requirement on informing the manager and before the clause requiring that the form be filed. We do not believe that such surplusage is required and would simply be a redundancy.

In light of the foregoing we find that there is substantial evidence to conclude that the Claimant violated the Rule in question and find no record evidence to conclude that the discipline meted out, a Level 1 Formal Reprimand, is arbitrary and/or excessive.

AWARD: The claim is denied.

Robert Perkovich, Chairman and
Neutral Referee, SBA No. 1112

DATED: July 16, 1999