

SBA No. 1112
BNSF/BMWE
Case No. 14
Award No. 15

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON NORTHERN/SANTA FE

AND

**CASE NO. 14
AWARD NO. 15**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

On July 29, 1999 the Brotherhood of Maintenance of Way Employees ("Organization") and the Burlington Northern/Santa Fe ("Carrier") entered into an Agreement establishing a Special Board of Adjustment in accordance with the provision 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, an Organization Member, and a Neutral Referee, awards of the Board only contain 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 claims 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 expedite 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 the 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.

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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 the applicable provisions of Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assessed 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

Claimant Wallace was hired by the Carrier on May 3, 1976 as a trackman and was promoted on two occasions to grinder operator and machine operator. At all material times herein his classification was as a welder helper. Prior to the events described herein he was not disciplined. However, on the day in question he had just returned from a three month furlough.

Following notice and investigation the Claimant was issued a Level S suspension of 30 days and placed on a probation period of three years. The action was assessed in conjunction with the claim that he violated Rules 1.1.2, 1.1.3, and 1.2.7 which read, in relevant part, as follows:

Rule 1.1.2

Employees must be careful to prevent injuring themselves... They must be alert and attentive.

Rule 1.1.3

Employees must... comply with all safety rules...

Rule 1.2.7

Employees must not withhold information or fail to give all the facts to those authorized to receive information regarding... personal injuries...

FINDINGS AND OPINION

On March 22, 1999 the Claimant and other members of his section crew began their assigned tasks with a safety briefing after which they began their work. In doing so

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the Claimant was required to lift an H plate, weighing approximately 265 pounds, and he attempted to do so without securing assistance from the other crew members. As he did so, he injured his arm and reported the injury to his section crew foreman. The foreman in turn notified the Roadmaster who then, later than evening contacted the Claimant about the injury.

During that telephone conversation the Roadmaster asked the Claimant how the injury occurred and the Claimant replied that when he attempted to lift the plate he injured his arm. He added that he was not receiving assistance from fellow employees at the time of the injury. The Roadmaster then asked the Claimant to appear at his office the next day so that accident reports could be completed.

The following day the Claimant met with the Roadmaster and other Carrier representatives. At that time the Roadmaster again asked the Claimant to assert however that he was being assisted by fellow crew members. They then completed accident reports with the Claimant answering the question "Could you, by more care on your part, have prevented your injury?" by writing "by asking for more help." The record shows that when the Claimant was pondering his reply to this question he asked the Roadmaster for clarification. In reply the Roadmaster told the Claimant that to answer how he could have prevented the injury.

Later, the Roadmaster and the other Carrier representative interviewed the Claimant's fellow crew members who stated, in their descriptions of the incident, that they were not assisting the Claimant when he was injured.

As noted above, the Claimant is charged with failing to work safely and for providing inaccurate information during the injury investigation. In his defense, the Organization contends that the Claimant did in fact receive assistance or, alternatively, that he performed the task in question in accordance with established procedure and that any instructions to the contrary were not adequately communicated to him and, finally in the alternative.

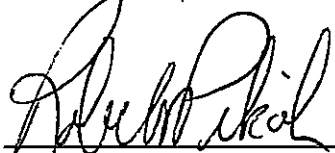
We disagree on all counts. First, the only testimony that the Claimant received assistance is that of the Claimant and his testimony is suspect for several reasons. First, he had just returned from a three month furlough and could be expected to see the situation in the light most favorable to him. Second, he did not deny telling the Roadmaster on the day of the incident that he was working alone, therefore his claim to the contrary is fraught with inconsistency. Third, the testimony of this fellow crew members is at best, equivocal, and at worst, contradicts his claim. Therefore, we find that on the day in question the Claimant did not obtain assistance to lift the H plate and in doing so violated the rules cited by the Carrier.

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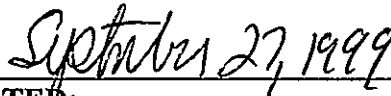
With regard to his defenses that he acted no differently than others and that he was not adequately put on notice that he should have obtained assistance, we are similarly unmoved. On the first point, the record shows that even though the Claimant might be correct that he acted no differently than he and others have in the past, there is no evidence that the Carrier knew and/or sanctioned such behavior. On the second point, although it appears to be true that there are no explicit rules or engineering instructions on lifting H plates, the Carrier's rules clearly state that employees should not perform a task alone that would require assistance and that the Claimant, although he may not have known the exact weight of the plate, knew that the plate was quite heavy.

AWARD:

The claim is denied.



Robert Perkovich, Chairman
And Neutral Member, SBA No. 1112



DATED: