SBA No. 1112
BNSF/BMWE
Case No. 17
Award No. 18

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT

BURLINGTON NORTHERN/SANTA FE

AND **CASE NO. 17**
AWARD NO. 18

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 grievances under Section 3 of the Railway Labor Act. The4 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 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 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 the investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of the proceedings 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 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 was hired by the Carrier on July 16, 1979 as a Carmen and later became a trackman and then machine operator. He has worked in that later capacity at all times material herein. The record shows that between 1981 and 1994 he sustained a variety of injuries on five different occasions before the injury giving rise to this dispute.

Following notice and investigation the Claimant was issued a Level 1 formal reprimand and placed on three (3) years probation for violating BNSF Maintenance of Way Operating Rules 1.1.3 and 1.2.5 which provide, in relevant part, as follows:

> Rule 1.1.3 Accidents, Injuries, and Defects
>
> Report by the first means of communication any...personal injuries...
>
> Rule 1.2.5 Reporting
>
> All cases of personal injury, while on duty or company property, must be immediately reported...

FINDINGS AND OPINION

On May 4, 1999 the Claimant returned to work from a furlough that began in October of the previous year. Upon his return he was assigned to a maintenance crew where he performed the customary duties of a sectionman including pulling spikes, removing bolts, and carrying plates for approximately five days. In so doing he used a hydraulic spike puller and an impact wrench and worked with another employee. Moreover, the nature of the work was repetitive, but not constant. The record reflects that all of the equipment that the Claimant used while working in that capacity was usable although the trigger assembly on the spike puller was slightly stiff. However, the

Claimant made no report of any equipment malfunctions during the period in question. At the end of that work week the Claimant felt fine, however on the following day his hands began to hurt. Over the course of that day the pain at first subsided, but by the evening the pain returned and his hands swelled such that he consulted his personal physician the following morning at approximately 10:30 a.m. The physician diagnosed that the Claimant's pain was due to his work the previous week and he reported his injury and condition to the Roadmaster the following morning at approximately 7:30 a.m.

The Carrier argues that the formal reprimand was appropriate in the instant matter because the Claimant did not timely report the injury to the Roadmaster. The Organization on the other hand argues that the formal reprimand must be set aside because the Claimant reported the matter within twenty-four hours after he first learned from his physician that the injury was or could have been work related. With regard to the fact that there is no dispute that the Grievant was aware of his pain on the day before and therefore that the period for reporting his condition commenced at that time, the Organization argues that he reasonably concluded that his pain was simply a result of his long time from work and there was no reason for him to believe at that time that an injury report was in order. Finally, the Organization asserts that the only reason the Claimant was reprimanded was because the nature of his injury was such that it was deemed "reportable."

Assuming only for the purposes of argument that the period within which an employee must report a personal injury is indeed twenty-four hours, we believe, in disagreement with the Organization, the period for reporting the injury commenced when the Claimant knew he was in pain and definitely by the time that he knew his pain was sufficient to contact physician, i.e. at some point on Saturday, May 8, 1999. Although it may be true that his belief that his condition was simply the result of a return to duty from an extended furlough, no where in the Carrier's rule or in its implementation is there an exception to the requirement that employees immediately report injuries for certain circumstances or causes of an injury. Rather, the rule simply requires that employees report injuries immediately. We are mindful that employment rules must be enforced with reason, but we cannot ignore the fact that effectively dealing with injuries is often a function of the period between the onset of the injury and a report of the incident so that proper action can be taken to deal with the injury.

The Organization's final argument is that the only reason that the Carrier issued a formal reprimand to the Claimant was because the nature and extent of his injury caused it to be deemed "reportable," apparently implying that the Carrier acted in some retaliatory fashion. However, there is no evidence in the record that supports that claim and we reject it summarily.

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AWARD

The claim is denied.

Robert Perkovich

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

DATED: February 1, 2000