SBA No. 1112
BNSF/BMWE
Case No. 26
Award No. 27

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT

BURLINGTON NORTHERN/SANTA FE

AND **CASE NO. 26**
AWARD NO.27

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.

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 in 1978 and has been disciplined on two prior occasions. The first, in 1987, was a suspension for acting in a discourteous and disorderly fashion and the second, in 1984, was a formal reprimand for his involvement in a vehicle accident.

Following notice and investigation the Claimant was issued a Level S 30 day record suspension with three years probation for violating BNSF Maintenance of Way Safety Rule S-1.4.7 which provides, in relevant part, as follows:

> Rule 1.13 Physical Exertion
>
> Always use safe lifting practices when lifting, carrying or performing other tasks that might cause...injury...Do not use excessive force to accomplish tasks. If one person cannot manually handle a load safely, then use mechanical assistance..,.

FINDINGS AND OPINION

On July 7, 2000 the Claimant was serving as a welding foreman and was working with another employee. On that day the Claimant and his fellow worker were to take empty gas tanks to be filled and to transport the filled tanks elsewhere. When they arrived at the point at which the tanks were to be filled they first manually removed an empty propane tank, weighing approximately 100 pounds, from their truck. After the tank was filled, and thus weighing approximately 160-180 pounds, the Claimant and the other employee lifted the tank. At this point the Claimant was lifting the top of the tank while the other employee lifted the bottom. When the other employees placed the bottom of the tank on a piece of wood in the truck bed, the Claimant lifted the top of the tank. However, the bottom of the tank slipped from the wood and the tank fell to the ground, striking the Claimant's foot. The Claimant suffered a fracture to his foot.

The record discloses that the Claimant and the other employee utilized a method on this occasion that did not differ from their ordinary practice. However, they manually lifted the propane tank despite the fact that a crane was available for their use.

The Organization contends that the Claimant was merely doing the task in question in the best fashion that he could and that the Carrier, the Organization, and the employees would be better served by conducting accident reviews and implementing safe work practices required as a result of those reviews rather than issuing discipline to employees when they are hurt on the job.

We cannot and do not quarrel with the Organization that a proactive and non-punitive approach to work place safety is a laudable goal and one that all concerned should strive to achieve. On the other hand however, there is no question that in this case there is an explicit rule that, had the Claimant followed, would have prevented the accident. More specifically, Rule 1.4.7 explicitly requires that excessive force should no be used and that if employees are unable to manually handle a load they should use mechanical assistance.

Clearly in the instant case the Claimant and his fellow employee could no handle the load manually and there was a crane available for their use. Yet, they proceeded to load the tank without the use of the crane and the injury ensued. Indeed, at the investigation both employees admitted as much. Under the circumstances we are compelled to conclude that there is substantial evidence of a rule violation.

AWARD

The claim is denied.

Robert Perkovich, Neutral Chair
SBA No. 1112

DATED: December 21, 2006