

SBA No. 1112
BNSF/BMWE
Case No. 33
Award No. 34

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Casados, Angelo B.**

**CASE NO. 33
AWARD NO. 34**

On February 2, 2001 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 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 Railroad 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 Railroad 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 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 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, Angelo B. Casados, grinder, for Burlington Northern Sante Fe Railroad was charged with failure to be alert and attentive when performing his duties and is also charged with the use of excessive force resulting in personal injury sustained to the shoulder of Philip G. Rath while pulling spikes with a claw bar at approximately 1450 Hours on Wednesday, April 25, 2001. This incident occurred near MP 432.6 on the Butte Subdivision while assigned as a grinder and welder on RPOS Steel Gang working at Alliance, Nebraska.

The investigation of the incident was conducted on May 9, 2001. The BNFE Maintenance Way Operation Rules reputed to be violated were Rule S-1.2.3 which says:

Assure that you are alert and attentive when performing duties.

and Rule S-1.4.7 which is as follows:

Employees must only use BNSF approved stretches when stretching at the beginning of the shift, before physical exertion, after rest breaks, and after a long period of sitting or maintaining the same posture. Employees are to stretch without exceeding personal capabilities, hut must participate to the extent of their ability or as directed by a physician. Stretches following rest breaks may consist of a subset of the approved stretches.

Always use safe lifting practices when lifting, carrying or performing other tasks that might cause back pain, injury or property damage. Do not use excessive force to accomplish tasks. If one person cannot manually handle a load safely, then use mechanical assistance. Where mechanical assistance is not

readily available, request assistance or stop and obtain the mechanical means necessary to complete the task.

Based on the reputed violations, the Claimant was given a ten (10) day suspension.

FINDINGS AND OPINION

It is the Organization's position that the Claimant-Casados followed both rules fully. However, it is the Organization's position that had the Claimant not been denied the use of the spike puller in the deadhead cart that his co-worker's injury could have been avoided. The Organization also points out that there was an inadequate job briefing by Road Master Kline which contributed to this incident. Lastly, the Organization notes that the use of the claw bar was an appropriate tool for the task to be accomplished. Based on all the above, the Organization requests that the Board deny this claim.

The Carrier rebuts the contentions of the Organization by pointing out that there was a fair and impartial investigation and hearing. The Carrier notes that the hydraulic spike puller was the most appropriate tool to be used to pull spikes, not the claw bar. Moreover, the Carrier adds that less manual force and dexterity would be needed to accomplish the task if the spike puller had been utilized. Simply put, the Carrier asserts that you take the hydraulic spike puller, place it over the spike, depress the handle, and activate the hydraulic by pulling the spikes. Thus, it is the position of the Carrier that the Claimant was negligent and inattentive in not choosing the most efficient tool for this purpose due to the convenience and proximity of the claw bar. Based on all the above, the Carrier requests that the Board sustain this claim.

After a careful review of the record, the Board concurs with the Carrier that the Claimant had the option to use the most appropriate tool located approximately **fifty** (50) feet away in the welding truck, the hydraulic spike puller. It logically follows that the claw bar may have inadvertently brought out this injury to the Claimant's Co-Worker-Rath requiring him to use excessive force in contravention to Rules S-1.2.3. and S-1.4.7 stated above. Accordingly, the Board **finds** the penalty for the said violations to be just and fair.

AWARD

This claim of a ten (10) day suspension is sustained.



**A. Y. McKissick
Neutral Chair
SBA No. 1112**



Dated