NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 143

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Case/Award No. 143

On May 13, 1983 the Brotherhood of Maintenance of Way Employes (hereinafter the Organization) and the Burlington Northern Railroad Company (hereinafter the 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. 925 (hereinafter the Board).

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed from service. On September 28, 1987 the parties expanded the jurisdiction of the Board to cover employees who claimed that they had been improperly suspended from service or censured by the Carrier.

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 chose 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.

The Agreement further establishes 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 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 proceedings and are to be reviewed by the Referee.

In the instant case, this Board has carefully reviewed each of the above-described documents prior to reaching findings of fact and conclusions. Under the terms of the Agreement the Referee, prior to rendering a final and binding decision, has the option to request the parties to furnish additional data; including argument, evidence, and awards.

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.

Background Facts

Mr. Marcus Searls, hereinafter the Claimant, entered the Carrier's service as a Sectionman on June 1, 1992 and he was occupying that position when he was suspended from the Carrier's service for five days commencing on October 19, 1992.

The Claimant was suspended as a result of an investigation which was held on September 17, 1992 at Wishram, Washington. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had violated certain rules by allegedly failing to promptly report regarding a personal injury sustained on August 18, 1992.

Findings and Opinion

On August 18, 1992, at or about the start of his shift, the Claimant reported to his timekeeper and requested to see a doctor because he felt numbness and pains in his arms.

The record evidence discloses that the Claimant was given permission to leave work and see a Dr. Bosshardt; that the Claimant had been released at approximately 8:00 a.m. and returned to the work site at approximately 11:30 a.m.; that he presented Timekeeper Dennis Faechner with the medical report from Dr. Bosshardt, which diagnosed the Claimant's condition as "carpal tunnel syndrome (work related)" and recommended the wearing of a splint and that the Claimant "see your doctor"; that Timekeeper Faechner notified Roadmaster G.A. Jacobson, who came to the Timekeeper's office to meet with the Claimant; that Roadmaster Jacobson did not read Dr. Bosshardt's report/diagnosis but asked the Claimant whether he "thought" the injury was work-related, and that the Claimant said "No" [according to the testimony of Roadmaster Jacobson] or that he "did not know" [according to the Claimant's testimony]; that the Claimant returned to his home and saw another physician who was also of the opinion that the condition was work-related; and that on or between the dates of August 20 and August 25, 1992 the Claimant completed the requisite personal injury forms, including the so-called "F-27".

Cutting to the quick in this somewhat bizarre case, the only relevant evidence in this record is that the Claimant provided the Carrier with timely notice on August 18, 1992, at approximately 11:30 a.m., with a medical opinion that he had sustained a work-related injury. The Board recognizes, but does not find it necessary to discuss the facts that (1) the Claimant was a new employee, who allegedly was not familiar with the manner in which personal injury forms were to be completed, (2) the Claimant may have had a pre-existing carpal tunnel syndrome condition caused by his having worked for two years at a research facility doing computer data entry work and (3) Timekeeper Faechner apparently suggested to the Claimant when he returned from Dr. Bosshardt that he, Faechner, did not believe that carpal tunnel syndrome could have been caused or have developed during the two short months that the Claimant worked for the Carrier.

The Claimant then sought a second opinion. There was nothing wrong with that. The Claimant's condition may not be work-related. Another forum will have to determine that. The Claimant could have been more knowledgeable, and more

procedurally correct had he immediately, upon return to the Carrier's facility on August 18, 1992, filled out the required personal injury forms. However, responsible Carrier personnel had actual or constructive notice that the Claimant had allegedly been afflicted with a work-related injury or condition. This notice was conveyed in a timely fashion when the Claimant presented Timekeeper Faechner and Roadmaster Jacobson with Dr. Bosshardt's diagnosis and prescription. Even if the Claimant said "No" when Roadmaster Jacobson asked if he, the Claimant, "thought" the injury was work-related, the Claimant's medical opinion was meaningless in light of the written opinion of Dr. Bosshardt. Carpal tunnel syndrome is a condition which develops over a period of time and may be exacerbated or triggered by a particular trauma. The Claimant was not in a position to speculate regarding the cause of the condition and the Carrier could not rely upon such speculation.

Accordingly, this Board finds no basis for the Carrier's imposition of any discipline, and will sustain the claim.

Award: The claim is sustained. The Carrier is directed to physically expunge any reference to the above discipline from the Claimant's Personal Record and to reimburse him for any time and benefits lost as the result of the imposition of the five day suspension.

This Award was signed this 20th day of April, 1993.

Richard R. Kasher

Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment No. 925