

NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 925  
Case/Award No. 155

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Case/Award No. 155

On May 13, 1983 the Brotherhood of Maintenance of Way Employees (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 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.

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. Marvin L. Turner, hereinafter the Claimant, entered the Carrier's service as a B&B Carpenter Helper on July 23, 1974. The Claimant was subsequently promoted to the position of Grinder Operator and he was occupying that position when he was censured by the Carrier on January 26, 1993.

The Claimant was censured as a result of an investigation which was held on January 6, 1993 at the Carrier's conference room in Havre, Montana. At the investigation the Claimant was represented by the Organization. The Carrier censured the Claimant based upon its findings that he had violated Rule 585 of General Manager's Notice No. 55 for failure to report personal injury sustained on November 24, 1992 near Tampico, Montana to immediate supervisor by the first available means of communication.

### Findings and Opinion

On November 24, 1992, the Claimant was assigned as a Grinder Operator to work with Head Welder R.W. Biem. The Claimant testified that he injured himself on that date as he was moving a "wheel barrow type grinder"; that he injured his lower back and felt a sharp pain "at the time"; that at sometime during that day he told Mr. Biem of his injury; but that "I'm not sure if he heard me, but then I told him again later on in the day".

The Claimant did not file an injury report until December 11, 1992, some seventeen or eighteen days after the injury. The Claimant testified that Mr. Biem told him on November 24, 1992 that an injury report should be filed; but that he, Mr. Biem, did not have the injury report forms available in the field. The Claimant continued to work as regularly scheduled until he saw a doctor on December 11, 1992, who diagnosed the Claimant's injury as a "herniated disc".

There has been substantial controversy in this record as to whether the Claimant was responsible for obtaining the personal injury report form or whether Mr. Biem or some other Carrier official was responsible for providing the Claimant with the personal injury report form and/or whether there is some "twenty-four hour" or other specified time certain within which the injury report form is to be filed.

An employee should know his/her obligations as well as his/her rights. The Claimant has been an employee of the Carrier for nearly twenty years. He has sustained previous injuries, and, apparently, has followed applicable injury reporting procedures. The Claimant must be imputed to know that he has a responsibility, when he suffers a sharp pain in his back which causes him difficulty in performing his work, which pain might evidence a new injury or the aggravation of an old injury, to obtain the proper forms and to submit a report as soon as possible.

Neither the Claimant nor the Organization can pass the Claimant's responsibility to Head Welder Biem or to Roadmaster Olson. The Claimant failed to timely file the report of his injury, which he admitted several times during the course of the investigation. Accordingly, the Carrier had just cause to issue the censure.

Award: The claim is denied in accordance with the  
above findings.

This Award was signed this 24th day of April, 1993.

Richard R. Kasher

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