

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

BURLINGTON NORTHERN RAILROAD COMPANY *
- and - * CASE NO. 23
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES * AWARD NO. 23

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 is limited to disciplinary disputes involving employees dismissed from service. 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 are dismissed from the Carrier's service may chose to appeal their dismissals to this Board. They have a sixty (60) day period from the date of their dismissals to elect to handle their appeals through the usual channels (Schedule Rule 40) or to submit their appeals directly to this Board in anticipation of receiving expedited decisions. An employee who is dismissed 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 dismissed 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 dismissal and the dismissed 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. Randall R. Rick, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on May 4, 1977. The Claimant was occupying this position when he was dismissed from the Carrier's service effective October 14, 1985. The Claimant was dismissed as the result of an investigation which was held on October 9, 1985 in Seattle, Washington. At the investigation the Claimant was represented by the Organization. The Carrier dismissed the Claimant based upon its findings that he had violated General Rule D, Rule 500 and Rule 502B, rules which provide in part for the prompt reporting of on-duty injuries. The Claimant was alleged to have violated these Rules of the Maintenance of Way Department while he was assigned as a Laborer on September 2 and September 18, 1985.

Findings and Opinion

On September 2, 1985 the Claimant was working as a Section Laborer at Stacy Street, and while carrying jacks to the truck, he allegedly felt a pain in his back. On September 18, 1985, at the same job location, the Claimant allegedly re-injured his lower back as he carried a crossing plank.

The Claimant reported his first injury to Mr. Tore G. Olsen, Assistant Foreman at Stacy Street. Mr. Olsen testified that at that time the Claimant did not wish to fill out an F-27 report as he "felt that he could work it out".

The Claimant also reported his second back injury to Mr. Olsen who advised him to see a physician. The injury occurred at 9:00 a.m. and the Claimant remained on the job site until his shift ended at 3:30 p.m. The following day, September 19, 1985, the Claimant went to Dr. Robert Griffith and was advised to take bed rest until September 24, 1985.

The Claimant testified that he reported to Section headquarters on September 20, 1985 to advise Mr. M. J. Forgey, Roadmaster at Seattle, Washington that he would be out of service and to file the F-27 and Personal Injury Report. As no one was in the office, he left a note regarding his injuries and returned home.

On September 25, 1985, the Claimant advised Mr. Forgey of the alleged injuries he suffered on September 2 and 18, 1985. At or about that same date the Claimant completed a Personal Injury Report and an F-27 which Mr. Forgey subsequently received in his office on October 1, 1985.

General Rule D from the Rules of the Maintenance of Way Department states:

"Accidents, injuries, defects in track, bridges, signals, or any unusual condition which may affect the safe operation of the railroad, must be reported by the quickest available means of communication to the proper authority, and must be confirmed by wire or on required form."

Rule 45 of the Agreement between the Carrier and the Organization states, in part, as follows:

"B. Employees injured while at work will not be required to make accident reports before they are given medical care and attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment."

Rule 500 from the Rules of the Maintenance of Way Department states:

"Employees will not be retained in the service who are careless of the safety of themselves or others. . ."

This Board is convinced that the Claimant failed to meet his obligations under these Rules. In waiting twenty three (23) days before properly reporting his first injury and nine (9) days before properly reporting his second injury, the Claimant was both careless of his own safety and the safety of his co-workers. He certainly did not file the requisite reports "as soon as practicable thereafter".

Rule 502(B) states that "Employees must comply with instructions from the proper authority". Mr. Forgey testified that he had, during a meeting in early September 1985, instructed the people who work under his supervision, including the Claimant, to file an F-27 and a Personal Injury Report immediately in the event of a personal injury. The Claimant testified that he was present at that meeting and understood the information discussed. Mr. Forgey testified that the method used by the Claimant to report his injuries was not in accordance with his instructions and thus, this Board is not convinced that the Claimant met his obligations under Rule 502(B).

Most significantly, the Claimant has been in the Carrier's service for more than eight (8) years; during that time he incurred, at least, twelve (12) injuries while on duty; a number of these injuries resulted in the Claimant's loss of work; and, his first reported injury occurred only three months after he began employment, on August 12, 1977. If any employee should have been aware of the requirement to promptly and properly report alleged injuries while on duty, it was the Claimant. He had reported numerous injuries in the past, and he should have known that it was necessary for him to report the instant alleged injuries to proper supervision on proper forms so that corrective and investigative action could have been taken to limit further injuries and the Carrier's potential liability. The Claimant's failures are inexcusable, and accordingly, we deny the claim.

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

This Award was signed this 23rd day of December 1985 in Bryn Mawr, Pennsylvania.

Richard R. Kasher

Richard R. Kasher
Chairman and Neutral Member
Special Board of Adjustment 925