

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925

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*****
BURLINGTON NORTHERN RAILROAD COMPANY          *
- and -                                         *
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES    *
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                                           CASE NO. 59
                                           AWARD NO. 59
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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 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. Gregory D. Giltner, hereinafter the Claimant, entered the Carrier's service as a Laborer on May 24, 1971. He was subsequently promoted to an Operator's position and then a Foreman's position, however, he was occupying a Laborer's position when he was suspended for thirty (30) days from the Carrier's service, effective August 8, 1988.

The Claimant was suspended as a result of an investigation which was held on July 7, 1988 in the Carrier's Yard Office, Hayne Street, Ottumwa, Iowa. At the investigation the Claimant was represented by the Organization. The Carrier suspended the Claimant based upon its findings that he had violated Rule E of the Carrier's Safety Rules and Rules 585 and 589 of the Maintenance of Way Department, because of his alleged failure to promptly report a personal injury he allegedly sustained on duty on or about February 23, 1988.

Findings and Opinion

The Claimant testified that on or about February 23, 1988, while working on a Maintenance of Way Gang in Russell, Iowa assigned to applying anchors to the track, that he experienced a pain in his hip and that he conveyed this information to a fellow employee, Truck Driver G.D. Oliver. The Claimant appeared for work the next day and, apparently, continued to fulfill his assignments through April 15, 1988.

Thereafter, the Claimant, as a result of experiencing pain and/or discomfort in his back sought medical assistance and he was subsequently taken out of service because of his back condition. On or about April 18, 1988 the Claimant advised Section Foreman Warren that as a result of x-rays of his back, he would not be available for work.

At some point in time subsequent to the Claimant's medical examination at the emergency room facility at Ottumwa Hospital, the Claimant notified the Carrier that the injury to his back was a "personal injury" and work-related.

As a result of this information, the Carrier's Claims Department was notified and Senior Claims Representative Warren Cox was assigned to the Claimant's case. Mr. Cox testified that he first became aware of the Claimant's alleged injury during the latter part of April 1988, and that he visited the Claimant thereafter at the Claimant's residence to discuss the nature of the injury and to develop necessary information in the event the Claimant instigated a proceeding against the Carrier because of the personal injury which was allegedly work-related.

The Claimant filed a Personal Injury Report dated May 30, 1988 which was received by the designated Carrier Representative on June 6, 1988. The Notice of Investigation advised the Claimant that a hearing would be held to determine his responsibility, if any, in connection with his "alleged falsification of Personal Injury Report allegedly sustained on approximately February 23, 1988 near Russell, Iowa as reported in late personal injury report dated May 30, 1988 and received in this office on June 6, 1988".

Much of the testimony and a considerable amount of the Organization's defense of the Claimant in this matter concerns the question of whether Claims Representative Cox (1) failed to assist the Claimant in completing a Personal Injury Report or (2) advised the Claimant that it was unnecessary for him to file a Personal Injury Report.

We find both of these contentions by the Claimant to be disingenuous. The Claimant, a Carrier employee for seventeen (17) years who had filed Personal Injury Reports in the past, is attempting to hide behind a shield of ignorance regarding his responsibility to fill out Personal Injury Reports after promptly notifying designated management representatives of the Carrier regarding an alleged personal injury. In reviewing the testimony of Claims Representative Cox vis a vis the testimony of the Claimant and his wife, this Board understands why the Carrier chose to credit Mr. Cox's testimony.

In this Board's opinion the record reflects that the Claimant clearly understood that he was obligated under Rules 585 and 589 to report all accidents or incidents to his immediate supervisors as soon as possible by the first available means of communication.

Even if the Claimant did not believe that he was injured on February 23, 1988 as the result of on-the-job activities, and even if the Claimant did not believe, until the latter part of April 1988, that his back pains were caused by on-duty injuries, the Claimant has still failed to explain why he waited from late April 1988 until at least May 30, 1988, the date he signed the Personal Injury Report, to notify the Carrier of his on-duty injury contention.

In these circumstances, the Board finds that the Carrier had just cause to conclude that the Claimant failed to promptly report a personal injury in violation of Rules 585 and 589 and General Rule E of the Maintenance of Way Department. It should be noted that the Claimant was not disciplined for an alleged falsification of the Personal Injury Report, a charge that was contained in the June 17, 1988 Notice of Investigation.

The Organization has raised questions regarding the propriety of the Notice of Investigation; contending that the notice was imprecise since the Carrier failed to cite specific rules which the Claimant allegedly violated. This Board has ruled many times that if the Notice of Investigation was sufficiently precise in terms of the incident(s) which caused the notice to be issued, then Schedule Rule 40 of the parties' agreement was not violated. In the instant case, we find that the Notice of Investigation met the requirements of Schedule Rule 40 and the investigation transcript indicates, without doubt, that the Claimant, his wife and his representative were fully prepared to present evidence and argument supporting their defense that the Claimant was not responsible for the delay in filing the Personal Injury Report; but that somehow Claims Representative Cox was responsible for the dereliction. As noted above, this Board finds no merit in the Claimant's effort to shift his burden under the applicable rules to the Carrier's claims department.

In conclusion, the Board finds that the Carrier had just cause to discipline the Claimant for his failure to abide by the rules regarding reporting of personal injuries. We further find that the Claimant, who reported more than a half a dozen personal injuries in the past and who was fully cognizant of the rules regarding the reporting of personal injuries, was not disciplined arbitrarily by the receipt of a thirty (30) day suspension.

Therefore, the claim will be denied.

Award: The claim is denied. This Award was signed this
3rd day of November 1988 in Bryn Mawr,
Pennsylvania.

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