

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE]	Claimant:
]	Ricky D. Caster
AND]	
]	
BROTHERHOOD OF MAINTENANCE]	CASE NO. 39
OF WAY EMPLOYEES]	AWARD NO. 40
]	

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 one's desire for expedited handling of this 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 substantiate 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 the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

Ricky D. Caster, Claimant, a Group 2, Machine Operator, is charged with failure to use safe lifting practices while moving motor grader cutting blades, which resulted in the personal injury to his lower back. The incident occurred on Friday, November 2, 2001 at approximately 0945 hours in Gillette, Wyoming. This alleged violation of Rule S. 1.4.7, Rule 1.12 and Rule 1.2.7 was assessed as Level 5 Thirty (30) Day Record Suspension Burlington Northern Santa Fe Maintenance of Way Safety Rules, Rule 1.4.7, Physical Exertion is as follows:

Employees must use only 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, but 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.

Maintenance of Way Safety Rule 1.2.7:

Do not perform a task alone that can only be safely performed by two or more people.

Maintenance of Way Operating Rule 1.1.2:

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

An investigation was held on Saturday, November 17, 2001 in the Conference Room at BNSF Terminal Office Building located at 107 North Gillette Avenue in Gillette, Wyoming.

FINDINGS AND OPINION

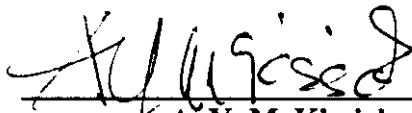
The Carrier asserts that the Claimant failed to comply with safe lifting practices while moving the motor grader cutting blades. Specifically, the Carrier points out that one is required to stretch extensively everyday prior to lifting anything. In particular, the Carrier asserts that one must straighten his neck, curve his back and position his rump where he can lift with his legs. Moreover, the Carrier adds that if the weight of the blades was overwhelming, then the Claimant should have sought help. Besides, the Carrier states that the length was quite awkward as the cutting edge was six (6) feet long, 8 inches wide and 5/8" thick. Both the weight and its length required that the Claimant should have sought help of another to lift it. In sum, the Carrier reasons that the Claimant used excessive force and should have waited for the aid of a second person before lifting the cutting blade. Based upon all the above, the Carrier request that the Board deny this appeal.

The Organization retorts that the Claimant did stretch before he did any lifting as required. Notwithstanding the awkwardness and height of the cutting blades, the Organization argues that he thought he could lift those two (2) blades alone. Thus, the Organization asserts that the Claimant complied with all three (3) rules as cited. In addition, the Organization argues that this incident should have been handled in a total different manner though "A Policy for Employee's Performance Accountability" (PEPA), not this disciplinary proceeding. Besides, the Organization points out that this is the Claimants' first disciplinary offense. Based on the foregoing, the Organization requests that the Board sustains this appeal.

After careful review of the record, the Board finds that the Claimant was negligent. Since he knew he had a previous back injury in the same lumbar region of his back, the Claimant should have been forewarned of the possibility of a secondary injury. Moreover, the Board finds that the Claimant admits that he did not "squat" when he lifted the blades and that he twisted his whole body, not just his trunk. Thus, the Board must conclude that he could have prevented and avoided injuring himself. Had the Claimant sought help, this incident and injury could have been averted. On the issue of process, the Board finds that this forum is appropriate to have decided this incident. The Claimant is only an eight (8) year employee with the Carrier and contributed to his injury by failing to be alert and attentive. Based on the above, the Board finds that the Claimant's appeal must be denied.

AWARD

**This thirty (30) day suspension must stand for the
aforementioned reasons. This appeal is denied.**



A. Y. McKissick
Neutral Chair
SBA No. 1112

Dated: February 19, 2002