

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Craig A. McCoy**

**CASE NO. 41
AWARD NO. 42**

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

Claimant, Craig A. McCoy, Foreman, was charged with failure to be alert and attentive when performing his duties and his failure to conduct a job safety briefing that included identifying potential hazards and ways to eliminate or protect against hazards. This incident occurred on Wednesday, November 21, 2001 at Newcastle, Wyoming. Claimant was charged with violating Rules S-1.2.3 and S-1.1. They are as follows:

Safety Rule S-1.2.3 Alert and Attentive:

Assure that you are alert and attentive when performing duties.

Maintenance of Way Rule S-1.1, Job Safety Briefing:

Employees must participate in a job safety briefing before beginning work and when work and job conditions change. The briefing includes a discussion of the general work plan, existing or potential hazards, and ways to eliminate or protect against hazards. Outside parties and contractors involved in the work or who are in the work area must also be included in the job safety briefing.

The investigation was held on Wednesday, December 5, 2001 at Newcastle, Wyoming where he was issued a Ten (10) Day Suspension.

FINDINGS AND OPINION

The Organization asserts that the Claimant complied with the rules. He had a job briefing and gave notice of the possibility of melting snow and slick conditions, as required. Thus, the job briefing adequately warned others of potential hazards. The Organization contends that the Claimant has an impeccable record. He has never been disciplined in his eight (8) years with the Carrier. Based on all the above, the Organization requests that the Board sustain this appeal and expunge his record.

The Carrier counters that an injury occurred during the period of time when the Foreman was in charge. The Carrier argues that had he been alert and attentive to the changing weather condition that this injury could have been prevented and hazards eliminated. The Carrier reasons that had the Foreman been more detailed and explicit at his job briefing, this accident could have been avoided. Based on the foregoing, the Carrier requests that the Board deny this appeal.

After a careful review of the record, the Board finds that the Claimant was not a contributing factor of the subsequent injury of Sectionman Miller. It would seem that the Foreman warned his crew of potential hazards and genuinely attempted to prevent injuries. The record reflects that he was neither inattentive nor negligent in performing his duties. Thus, the Board finds that the Claimant complied with both aforementioned Rules. It is also important to note that the Foreman has never incurred a disciplinary infraction. Based on all of the above, the Board finds that this appeal should be sustained.

AWARD

The appeal of the Ten (10) Day Suspension is sustained. Accordingly, the Claimant's record shall be expunged.

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A. Y. McKissick
Neutral Chair
SBA No. 1112

Dated: February 19, 2002