

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 132

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Case/Award No. 132

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. Roy C. Rodriguez, hereinafter the Claimant, entered the Carrier's service as a Laborer on April 20, 1959. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying that position when he was censured by the Carrier.

The Claimant was censured as a result of an investigation which was held on August 31, 1992 in Great Falls, 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 for his alleged failure to report a personal injury to supervision by the first available means of communication on August 13, 1992.

Findings and Opinion

On August 13, 1992 the Claimant was assigned as a Grader Operator in the Great Falls, Montana area. The Claimant was working alone filling up the hydraulic system on a speed swing when he tripped and bumped his right shoulder and upper arm against the

machine at approximately 2:40 p.m. The Claimant continued working his shift until its completion at 4:00 p.m.

That evening at approximately 9:30 p.m., the Claimant's right arm became swollen, and the Claimant went to Columbus Hospital to have his arm examined. The Claimant was seen by a Dr. Nielson, who advised him that he had a bruise and that he should apply ice to his arm in order to bring the swelling down.

The following morning, August 14, 1992, at approximately 7:30 a.m., the Claimant advised Roadmaster E.K. Sherman of his injury. Roadmaster Sherman directed the Claimant to complete an accident report form at that time which the Claimant did.

The Claimant then reported for duty and completed his regular work shift on August 14, 1992.

The Carrier has cited the Claimant with a violation of Rule 585. That Rule, in its original form reads as follows:

All accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication. F-27 to follow to immediate supervisor, division superintendent and/or terminal or shop superintendent.

Rule 585 was amended by General Manager's Notice 55 which was issued on May 26, 1992 and currently reads as follows:

Effective June 1, 1992 Rule 585 of the Safety Rules and General Rules, Form 15001, dated August 1981 is hereby changed to read: While accidents/incidents must be reported to immediate supervisor as soon as possible by first available means of communication, determination must be made as to reportability, diagnosed illnesses or injuries requiring treatment beyond first aid require an F-27 to be completed. Information surrounding a first aid injury shall be entered into the first aid log book maintained locally.

The Claimant testified that he had not seen and was not aware of the June 1, 1992 amendment to Rule 585.

Section Foreman A.I. Simon testified that he saw the Claimant at approximately 3:00 p.m. on August 13, 1992, and that the Claimant did not advise him of any injury. Section Foreman Simon testified that the Claimant did not appear to be injured.

The Organization Representative objected to the implication that the Claimant, as a Group 1 and 2 Machine Operator, was under the supervision of Section Foreman Simon. Therefore, the

Organization Representative argued that Section Foreman Simon could not be considered the Claimant's immediate supervisor, and thus the Claimant was not obligated to report any injuries to Section Foreman Simon. The Organization Representative noted that Roadmaster Sherman was not available at his Great Falls office until approximately 5:00 p.m. on August 13, 1992, and that the Claimant, as a new employee in the Great Falls region, did not know any other supervisors to whom he might report the accident.

The Board finds no merit in these claims by the Organization. The Claimant, a thirty-four year employee of the Burlington Northern, was certainly capable, if he felt or understood that he had suffered an injury, of finding and notifying a supervisor regarding such accident/incident.

The nature of railroad employment, particularly in the Maintenance of Way craft, is such that employees regularly bump into or are lightly struck by equipment. Every such incident cannot be properly categorized as a "reportable accident/incident".

In the instant case, the Claimant states that at approximately 2:40 p.m. on August 13, 1992 he fell against the speed swing; that he noticed no pain; that he completed his shift which ended at 4:00 p.m.; that at approximately 9:30 p.m. his arm began swelling and that he obtained medical assistance at Columbus Hospital; that the doctor there advised him to use an ice pack to reduce the swelling; that the following morning he reported the incident to Roadmaster Sherman and that under Roadmaster Sherman's direction he completed an F-27 accident/injury report; and that, upon completion of that report he continued with his day's duties.

Amended Safety Rule 585, which creates a distinction regarding F-27 reporting of illnesses or injuries above and below the standard of those which require first aid, does not impact upon this Board's determination in the instant case. The question here is whether the Claimant should have reported his falling against the speed swing at the time it happened. Based upon the evidence of record, which indicates that there was no injury or pain associated with the incident, this Board concludes that the Claimant did not violate Rule 585. It is the opinion of this Board that the Claimant did, in fact, "report to [his] immediate supervisor as soon as possible by first available means of communication" when it became obvious, after working hours, that falling into the speed swing was the cause of an injury.

Based upon the foregoing findings, this Board concludes that the Carrier has failed to prove by substantial and convincing evidence that the Claimant failed to act reasonably and prudently

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and therefore violated Rule 585. Accordingly, the claim will be sustained.

Award: The claim is sustained. The Carrier is directed to physically expunge any reference to the censure from the Claimant's Personal Record. This Award was signed this 15th day of December, 1992.

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

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E.L. TORSKE