

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 925
Case/Award No. 146

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Case/Award No. 146

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. Dale K. Larson, hereinafter the Claimant, entered the Carrier's service as a Section Laborer on May 6, 1981. The Claimant was subsequently promoted to the position of Machine Operator and he was occupying that position when he was censured by the Carrier on October 23, 1992.

The Claimant was censured as a result of an investigation which was held on October 1, 1992 in the Carrier's Depot in Marshall, Minnesota. At the investigation the Claimant was represented by the Organization. The Carrier censured the Claimant based upon its findings that he had violated certain rules regarding the prompt reporting of a personal injury.

Findings and Opinion

The relevant evidence in this record concerns a statement by the Claimant that while he was working as a Group 4 Operator out of Marshall, Minnesota on September 17, 1992, he was moving a plank with fellow employee Keith Overbeke, when he first experienced some type of pain or "kink" or "pulled muscle" in his back.

The Claimant testified, and that testimony was confirmed by Section Foreman Keith Burckhardt, who was the Claimant's Section foreman, that the Claimant did not specifically advise any supervisor of his claimed injury until 7:30 p.m. on the evening of September 17, 1992 when he told Foreman Burckhardt of his condition.

At 7:30 p.m. on the evening of September 17, 1992 Foreman Burckhardt and the Claimant discussed the Claimant's back pain and according to the testimony of Foreman Burckhardt, which is not disputed, "We both agreed we wouldn't file any reports beings it was so late and we both decided [that the Claimant would] go home take a hot shower and see what tomorrow brought". In fact, "tomorrow brought" considerable pain and immobility for the Claimant which required medical attention.

The thrust of the Carrier's conclusion that the Claimant failed to comply with required reporting procedures and rules regarding notification of supervision of a personal injury is based upon the fact that from the time the Claimant was first allegedly injured, 10:30 a.m. September 17, 1992, until he reported the injury to Foreman Burckhardt, at 7:30 p.m. September 17, 1992, approximately nine hours elapsed.

The Claimant has testified that he did not feel any significant pain in his back until approximately 3 to 4:00 p.m. on the day in question; and at that time he conveyed his distress or condition to fellow employees, including Foreman Burckhardt, whom the Claimant implies "walked away from him" and appeared not to be interested in the Claimant's condition. The implication, that is that Foreman Burckhardt was not interested in the Claimant's condition during the course of the work day, is not supported by the record evidence.

The record evidence does support a finding that as early as 1:00 p.m. on the afternoon in question the Claimant was experiencing sufficient discomfort and pain that he conveyed that

condition to fellow employees; but he did not stop working and he did not attempt to contact appropriate supervision to report the alleged situation.

The Claimant cannot contend with any degree of reliability that he was not aware of the applicable rules regarding prompt reporting of personal injuries. By his own testimony, the Claimant's condition by midday in his work schedule on September 17, 1992 was severe enough to cause him considerable pain/discomfort. Waiting until the conclusion of his work shift, even if the remainder of his work involved nothing more than the implied light duty of picking up flags, was an irresponsible act and clearly violated the reporting rules regarding personal injuries. Accordingly, this Board concludes that the Carrier had just cause for imposing the discipline that it did. Therefore, the claim will be denied.

Why, when both the Conducting Officer and the Organization Representative conceded that any evidence regarding subsequent events of September 22 and September 23, 1992 and a pending legal action by the Claimant against the Carrier regarding an unrelated incident were not relevant to the charge, they both determined to fill the record with this evidence is beyond this Board's comprehension. We raise this issue only to indicate to the parties that "sifting through" relevant evidence in these proceedings is difficult enough, and we would strongly suggest to both the Carrier and the Organization that the Chairman's job would be made substantially less difficult if they would restrain their enthusiasm to include irrelevant and immaterial matters in these records.

Award: The claim is denied in accordance with the above findings. This Award was signed this 20th day of April, 1993.


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