

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. 48

AWARD NO. 48

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 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.

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. Harold R. Bell, hereinafter the Claimant, entered the Carrier's service as a Laborer on March 10, 1980. He was occupying that position when he was censured by the Carrier on November 9, 1987. The Claimant was censured as a result of an investigation which began on October 13, 1987 and was completed on October 14, 1987 in Centralia, Washington. At the investigation the Claimant was represented by the Organization. The Carrier issued a Mark of Censure on the Claimant's personal record based upon its findings that he had violated Superintendent's Notice No. 30 and Rules 530A and 585. Specifically the Claimant was censured for his alleged failure to report a personal injury prior to going off duty at or about 3:30 p.m. on September 30, 1987.

### Findings and Opinion

On September 30, 1987 the Claimant, while working as a Laborer on Maintenance Gang 40, was assigned the job of hammering down spikes. The Claimant completed his shift and returned to his outfit car at approximately 3:30 p.m. At approximately 4:30 p.m. the Claimant began to experience pain in his left shoulder.

The following morning, October 1, 1987, at approximately 6:20 a.m., the Claimant notified Section Foreman Jim Youngquist of his injury and was sent for medical treatment. Upon his return to the Centralia Depot, the Claimant filled out an accident report in Roadmaster P.M. Christensen's office.

The Carrier issued a Mark of Censure to the Claimant because he allegedly violated Superintendent's Notice No 30 which notice reads in pertinent part as follows:

"On duty personal injuries must be reported to your Exempt Supervisor or to the Assistant Chief Dispatcher . . . before going off duty."

There is obviously good reason for the Superintendent's Notice as well as Schedule Rule 45B. This notice and rule require employees to report injuries before going off duty and to complete accident reports and seek proper medical attention "as soon as possible" and "at the earliest possible moment". The Carrier and the Organization are both justifiably concerned that employees injured on duty receive proper medical attention as soon as possible and that reports of injuries on duty, caused as the results of negligence and/or accidents, also be completed as contemporaneously as possible with the event so that there is "no space for fudging or misrepresentation".

However, as the cases referenced by Organization Representative S.R. Walster reflect, certain injuries do not manifest themselves immediately. It is not uncommon where an employee is engaged in heavy, repetitive physical labor for muscle soreness or strains not to make themselves evident to the employee until some time after the work has been completed.

The Carrier has presented no evidence to dispute the Claimant's testimony to the effect that he did not experience pain in his left shoulder until one hour after he had completed his shift and left the job site.

It is also apparent that the Claimant appeared for work the

next morning forty (40) minutes prior to the start of his scheduled shift in order to report the injury. In this Board's opinion the Claimant acted with reasonable diligence and speed in making the required report.

The fact that Roadmaster Christensen was available on the job site until approximately 5:00 or 5:30 p.m. on September 30, 1987 does not establish that the Claimant failed to report an injury prior to his "going off duty" as is required by Superintendent's Notice No. 30.

Accordingly, we find that Carrier did not have proper cause to enter a Mark of Censure on the Claimant's record, and this Board will sustain the grievance by directing the Carrier to rescind such discipline.

Award: The grievance is sustained. The Carrier is directed to expunge the Mark of Censure entered as a result of the September 30, 1987 incident from the Claimant's Personal Record.

This Award was signed this 27th day of January 1988  
in Bryn Mawr, Pennsylvania.

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