

PUBLIC LAW BOARD NO. 5939

Case No. 55

Award No. 55

PARTIES TO DISPUTE: **BROTHERHOOD OF LOCOMOTIVE
ENGINEERS & TRAINMEN**

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Appeal on behalf of Engineer Michael Reid for removal of discipline (30 day record suspension and probation for one year) from his personal record and pay for all time lost.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The Claimant hired out as a Locomotive Engineer on December 12, 1998. Since 2003, he has worked at Northtown, Minnesota. In 2004, the Claimant was out of work due to an on-duty injury.

On Friday, September 10, 2004, the Carrier sent the Claimant a letter requesting that his physician provide information regarding (1) diagnosis of the medical condition for which he was being treated, (2) treatment plan or treatment being received, (3) an approximate length of time that this treatment will continue and (4) his current functional level and any current functional restrictions.

This medical information was to be furnished to Kevin Vaudt, who was representing the Carrier's Medical Department, by Friday, September 17, 2004. The Claimant received the letter on Tuesday, September 14, 2004. He telephoned his treating

physician and asked his physician's assistant to send Kevin Vaudt the information requested. Claimant was under the impression that the information would be sent to Mr. Vaudt.

The Claimant had an appointment with his treating physician on September 28, 2004. The physician's assistant assured him that she would send all the documentation to Kevin Vaudt. However, it was not sent until October 18, 2004. Moreover, according to the Carrier's Medical Department, the information submitted was incomplete.


On September 24, 2004, the Claimant was notified to attend an investigation to ascertain the facts and determine his responsibility, if any, for failing to comply with the instructions given him to furnish specific medical information by September 17, 2004. After two postponements, the investigation was held on October 19, 2004. On November 12, 2004, the Claimant was advised that the charge was upheld and that he was assessed a 30-day record suspension and probation for one year as a result.

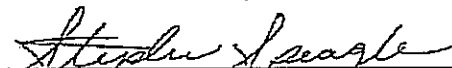
Inasmuch as the Claimant was out of work a considerable period of time due to a work related injury, the Carrier had the right to the medical information it requested that his physician furnish. However, it gave him only three days to furnish the information which was not sufficient time, in this Board's opinion.


We are not convinced that the Claimant deliberately delayed furnishing the Carrier's Medical Department the medical information it requested. Rather, he simply was not given adequate time to obtain the information from his treating physician. Accordingly, the discipline assessed the Claimant on November 12, 2004, was unwarranted and must be removed from his personal record. Since the Claimant was unable to work because of his work related injury he is not entitled to compensation for time lost.

AWARD: Claim sustained to the extent indicated in the Findings.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Stephen D. Speagle, Employee Member


Roger A. Boldra, Carrier Member

Dated: Oct 3, 2006