NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute: **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS** **-and-** **NORFOLK SOUTHERN RAILWAY COMPANY**	**AWARD** **Case No. 161** **Claimant L. B. Foor**

STATEMENT OF CLAIM:

"Claim on behalf of Electrician L. B. Foor to be returned to service and to be made whole for all losses, to include but not limited to lost wages, vacation rights, health and welfare benefits, pension benefits such as Railroad Retirement and Unemployment Insurance and any other benefits that would have been earned by Claimant during the time he was unjustly dismissed from service with the Carrier following an investigation for the following charges:

1. **Your failure to properly and timely report an on-duty injury to your right shoulder which you allegedly incurred while in the process of repeatedly lifting an impact gun to install com bolts on November 21, 2013, while assigned as an electrician on the second shift (3:00 PM – 11:00 PM) at Juniata Locomotive Shop, Altoona, Pennsylvania, in violation of General Rule N (now Section [3] of General Safety Rule 912) of the Norfolk Southern Book of Safety and General Conduct Rules.)**
2. **Your failure to promptly notify your supervisor that you had obtained medical attention for an on-duty injury to your right shoulder which you allegedly incurred while repeatedly lifting an impact gun to install com volts on November 21, 2013, while assigned as an electrician on the second shift (3:00 PM – 11:00 PM) at Juniata Locomotive Shop Altoona, Pennsylvania, in violation of General Rule N (now section [5] of General Safety Rule 912) of the Norfolk Southern Book of Safety and General Conduct Rules.**
3. **Your conduct unbecoming an employee for making false and/or conflicting statements with respect to an alleged on-duty injury to your right shoulder in that you stated to medical personnel at Blair Orthopedics, 300 Fairway Drive, Altoona, Pa, on January 20, 2014, that you had sustained an injury to your right shoulder on**

"09/20/13" due to "gym injury with heavy weights" and that the shoulder injury was not work related, but then stated in a Norfolk Southern Personal Injury Report (Form 22) dated May 27, 2016, that you had incurred an on-duty injury on November 21, 2013, due to "lifting impact Gun Repetavity (sic) to instal (sic) com Bolts."

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

In this claim, the Organization takes exception to what it asserts was Carrier's unjust dismissal of Claimant Foor on multiple charges implicating his handing of an alleged on-duty injury. Specifically, Carrier contends Mr. Foor neglected to properly report a shoulder injury he represents was sustained on November 21, 2015; failed to ever notify supervision that he had received medical treatment for that injury; and then falsified information about the matter in his subsequent discussion with management.

Carrier's dismissal action followed a formal investigation into those incidents conducted on July 7, 2016. When the dispute was not resolved in discussions between the parties in claim handling it was advanced to the Board for final disposition. Following careful review of the record before the Board in it entirety, for the reasons that follow the Board must deny the claim.

According to the record presented for our consideration, although local supervision at the Juniata Locomotive Shop had been unaware of any prior on-duty injury sustained by Claimant, on May 26, 2016, Senior General Foreman Brian Cope learned that Claimant had initiated a civil lawsuit seeking redress for injuries allegedly sustained while working as an electrician at the facility. On May 27, 2016 he and Manager of Locomotive Running Gear Eric Skrivseth met with Mr. Foor at approximately 2:00 PM to discuss the matter. According to Cope, Claimant initially denied having being injured, then stated that he had hurt his shoulder and conceded he had not reported the injury to any supervisor. The three men then adjourned to an office where claimant completed a Form 22 (Personal Injury Report) stating that his injury had occurred on November 21, 2013, with the cause described as, "lifting Impact Gun Repetavily [sic] to install Com Bolts...I did not report due

to the fact it was sporadic and I thought I needed to stretch more..." Claimant was then removed from service pending further investigation.

The testimony of Manager Skrivseth broadly confirms that of Mr. Cope:

> I accompanied [Mr. Cope] to the shop floor looking for Electrician Foor in order to ask him about the shoulder injury that was alleged in the lawsuit. At about 2:00 p.m., we met...Brian Cope told him that we needed to ask him some questions about a law suit we had received and he asked Electrician Foor whether he had sustained an injury in November of 2013. Electrician Foor was initially uncertain but then said that was when had injured his shoulder. We accompanied Electrician Foor to a nearby office to ask him about the particulars of the shoulder injury he stated that he had sustained. We asked Electrician Foor whether he had reported the shoulder injury to NS supervision and he stated that he had not done so. We also asked Mr. Foor whether he had reported to NS supervision when he had obtained medical treatment for the shoulder injury as an on duty injury and he said that he had not done so. We also asked Mr. Foor whether he had reported to NS supervision when he began missing time for the shoulder injury as an on duty injury. He said that he had not done so.

Additional inquiries disclosed information from Carrier's Medical Department establishing that Claimant had visited Blair Orthopedic at a date not identified on this record, but apparently in 2013, with clinic records describing the onset of his injury as "occurred 8/2013," and the patient presenting a description of the cause as, "Gym injury with heavy weights." In response to the question, "Shoulder injury work related?" Claimant stated, "N." On Page 2 of the report, in response to "Date of onset," the following response appears: "(4/2013 started after he was weight lifting)." In response to "Aggravating Factors," the form reflects "lifting (overhead)" In response to an additional inquiry as to whether the injury was work related, the form reflects: "Patient is working regular duty." Under "Chief Complaint," the form indicated Claimant was "Here for Review of MRI Right Shoulder. Patient is an electrician. He lifts weights 4-5 times a week and benches about 225 lbs and lateral side raises 45 lbs..."

Succinctly, Carrier's General Safety Rule 912 [3] *Reporting Employee Injuries and/or Illness* mandates the reporting of on-duty injuries by all employees before leaving Company premises. Section [5] of Safety Rule 912 reads in pertinent that employees obtaining medical attention or marking off for an on-duty injury or occupational injury "must promptly notify his/her supervisor." Claimant protests in this instance that he

reported to his doctor in 2013 that his shoulder was not work-related because "I couldn't prove what it was related to...I'm not able to diagnose when...or what it was related to." Asked when it bothered him most, he replied, "When I'm lifting weights at the gym....Common sense would dictate lifting my shoulder once a week for—let's say I went to the gym every week for 52 weeks. Compared to 11 years of lifting overhead...it wouldn't be the weightlifting that did it."

Although there are plentiful ambiguities in the substantial record before the Board, the Board emerges with a pronounced sense that Claimant's gymnastics in this instance do not power through an otherwise troublesome cluster of work rule violations having a corrosive impact of trust. We sense both a discouraging irreverence for extremely important detail and inexplicable disregard of rules threaded throughout the record. Examples are numerous, but the Board cites one as illustrative: If Claimant believed in 2013, as he reported at the time to an independent physician, that he had pain in his shoulder commencing in August of that year, or April, we can't be certain, aggravated by heavy weight lifting, and had any reason to suspect the issue was work-related, as he now asserts should be apparent, it is reasonable to believe that he knew, or should have known after 11 years of service that his employer took the reporting of work-related health issues extremely seriously. He insists that common sense should attribute the problem to his repetitive lifting at work, (now conveniently modifying the frequency of his gym activity), but never explains why that common-sensible glimpse of the obvious work-relatedness was not apparent and reported three years earlier in 2013, or why his medical consultations could not reasonably have been disclosed to his employer as required.

Silence on those questions, dense with potential for significant costs, is not tolerated by any employer, for obvious reasons. Non-reporting interferes with prompt treatment for the individual and prevents or compromises the employer's ability to safeguard other employees. Here, however, three years elapsed before Claimant made his employer aware of the work-related injury. And when he did announce it, it was through a lawsuit, without forewarning, in which facts badly aligned with medical reports made years earlier were asserted. Brutally summarized, an injury reported to Claimant's right shoulder

represented in 2013 as sustained in the gym in 2016 morphs into claims for monetary relief arising from an injury sustained in lifting an impact gun overhead at work.

Library shelves sag with prior arbitral authority finding dismissal as the proper penalty for failure to promptly notify supervision of on-duty injuries. The same may be said for rule violations involving failure to notify Carrier of medical care undertaken outside of the employer's medical auspices without notification to the employer, and making false and conflicting statements in the context of on-duty injuries. The facts of record here leave little room to second-guess Carrier's determinations on all three points. As the substantial authority of all four Divisions of the NRAB have long affirmed, in the absence of arbitrary, capricious or patently unreasonable judgment on Carrier's part, its decisions in such discipline cases must be affirmed.

A W A R D

The Claim is denied.

James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Carr
Carrier Member

Dated: February--, 2018