

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14025
Docket No. 13862
10-2-NRAB-00002-080011**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

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PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“On 4-1-03 I had an injury on the job. This injury was to my neck which the Manager of Oakland Mechanical Department Mike Hughes was found by the F.R.A. of being in non-compliance in 2 areas.

One area of noncompliance is that of Section 225.33, Title 49, Code of Federal Regulations (CFR), Part 225. As was mentioned in the close out letter, this was for noncompliance with FRA’s anti-harassment provision in our accident reporting rule. The “Schedule of Civil Penalties,” for Part 225 is found in Appendix A to Part 225, and shows that a violation of Section 225.33.

The other area of noncompliance is that of Section 225.11, Title 49, CFR, Part 225. As was mentioned in the close out letter, this was for UP’s noncompliance with FRA’s requirement that any reportable injury is to be reported to FRA no later than 30 days following the month in which the reportable injury occurred, and relates to my on-duty injury of April 1, 2003. The “Schedule of Civil Penalties,” for Part 225 is found in Appendix A to Part 225, and shows that a violation of Section 225.33.

As a result of said injury and following surgery. I was off work from 4-12-03 through 6-20-03 est. I would like my pay for that period. After abolishing my accommodated position on 8-31-05 and ignoring the Medical Standards of U.S, Railroads 4.1.5 Self Reporting of Medical

Conditions where Manager Mike Hughes was aware of my disability from 4-1-03 injury that required restrictions or accommodations. He was required after to report to U.P.R.R. Health Department that I had a medical condition that would impact the safe performance of my position. Once the manager is aware of said condition he was required to report it to U.P.R.R. Health Department where I should have had a medical examination for fitness-for-duty purposes. Manager Mike Hughes failed to do this. On 10-10-05 I had injured my neck once again. I had surgery on 3-13-06 as a result of 10-10-05 injury where a bar was placed in my neck at C-3,4 to C-6,7 and other surgery on 8-02-07 where I had a Lamino Plasty procedure done. All 3 surgeries are a result of 4-1-03 injury that Manager Hughes was found in non-compliance for Section 225.33, Title 49, Code of Federal Regulations (CFR), Part 225. Also Section 225.11, Title 49, CFR, Part 225. As well as on 8-31-05 The Medical Standards of U.S. Railroads 4.1.5 Self Reporting of Medical Conditions I would like back pay from 10-10-05 to present as well."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant alleges that he was injured on the job and seeks backpay for time off as a result of the injury. Undisputed record evidence indicates that the Claimant first informed the Carrier of this claim nearly two years after his dismissal for a variety of infractions on December 13, 2005 following an Investigation held on November 30. As its basis for dismissal, the Carrier

determined that the Claimant had violated several General Code of Operating Rules ("Rules") by refusing to take a drug test, thereby establishing a positive result. The record reflects that the Claimant did not attend the Investigation. As recited in Second Division Award 13933, the Investigation revealed that while working as a Carman on October 10, 2005, the Claimant was quarrelsome and insubordinate with his supervisors, failed to comply with instructions and refused to take a reasonable suspicion drug and alcohol test.

Award 13933 denied the Claimant's request for reinstatement with pay for time lost.

Nearly two years after his December 13, 2005 dismissal, the Claimant requested backpay for the period of April 12 through June 20, 2003 on the basis of an alleged on-the-job injury and additionally seeks backpay from October 10, 2005 to the present.

The latter claim is res judicata, because the precise matter was addressed squarely by Award 13933.

The remaining claim involves a request for backpay in connection with the Claimant's allegation of an on-duty injury allegedly sustained prior to the date of his dismissal. Because the Claimant did not attend his Investigation, the Brotherhood Railway Carmen Division of the Transportation Communications International Union informed the Claimant that under the terms of the collective bargaining Agreement he had forfeited his seniority rights.

The Organization's advice to the Claimant was apt. Both the Railway Labor Act and the Agreement require all claims to be handled on the property "in the usual manner." The claim was not conferenced on the property. Moreover, the Claimant did not follow the on-property requirements for progressing a claim on his own behalf in the usual manner. Specifically, the Rules require that all claims be filed within 60 days of the causal event upon which the alleged Rule violation occurred. The Claimant initially notified the Carrier of his claim on October 22, 2007, thus failing to inform the Carrier of his claim until nearly two years after the date of his dismissal from the Carrier's service, and for more than four and one-half years after the alleged Rule violation occurred.

Accordingly, the instant claim must be dismissed.

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AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of May 2010.