

PUBLIC LAW BOARD NO. 6051

AWARD NO. 10
CASE NO. 10

PARTIES
TO
DISPUTE

UNION PACIFIC RAILROAD COMPANY
and
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

STATEMENT OF CLAIM

The Carrier acted in an arbitrary and capricious manner when it assessed Machinist J. Holder a Level 2 discipline pursuant to Carrier's UPGRADE Discipline Policy for failure to promptly report a personal injury as required by Rule 1.2.5. It is requested that the Carrier remove the discipline from Claimant's personal record.

FINDINGS AND OPINION

The Board after hearing upon the whole record and all the evidence, finds that the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted under Public Law 89-456 and has jurisdiction over the parties and dispute involved herein; and that the parties were given due notice of the hearing thereon.

At the time of the incident at issue, the Claimant was employed as a maintenance machinist at the Carrier's Palestine, Texas Car Repair Facility. Over a span of nine months, beginning in mid-May, 1996 and ending in late February, 1997, he purportedly was involved in several injuries, two of which were job-related and the other a personal injury at the workplace. More particularly, on May 17, 1996, the Claimant allegedly injured his ribs, side and chest; on February 4, 1997, he allegedly sustained an injury when he hit his head at a safety meeting; and on February 20, 1997, he allegedly re-injured his ribs. Claimant began filling out reports on February 28, 1997 for the May 17, 1996 injury and February 20, 1997 re-injury to his ribs, but before completing them, he told supervision he wanted to see a doctor. The Carrier released him to see his doctor, after which he was to return to the Car Repair Facility to complete these injury reports. However, the Claimant did not return to work that day. He returned his supervisor's call of March 1, 1997 the next day, during which he informed him for the first time of the head injury he purportedly sustained on February 4, 1997. Claimant reported to work on March 3, 1997, and completed his report on the three injuries he allegedly suffered. Shortly thereafter, the Claimant left work because he "didn't feel good."

On March 6, 1997, the Carrier notified the Claimant to attend a formal investigation for purposes of ascertaining his innocence or guilt regarding the personal injury reports he submitted on March 3, 1997 alleging an on-duty injury on May 17, 1996, with a recurrence on February 20, 1997, and a personal injury on February 4, 1997, all of which indicated that he "acted in a careless and negligent manner." The notice of investigation further stated that the allegations stated therein, if proved, constituted a violation of Rules 1.6.1, 1.6.2, 1.6.4, 1.1.3 and 1.2.5. An investigative hearing was held on March 14 and 19, 1997. Several weeks later, the Carrier, on April 8, 1997, informed the Claimant that the evidence adduced at the hearing established his failure to immediately report an on-duty injury which violated Rule 1.2.5. Pursuant to the Carrier's UPGRADE Discipline Policy, the Claimant was assessed a Level 2 discipline; i.e., a one-day alternate assignment with pay to develop a corrective action plan.

The Organization, on behalf of the Claimant, filed a claim appealing the Carrier's disciplinary action on procedural and substantive grounds. Although the Organization disputes the Claimant's discipline on the merits, asserting that he was subject to disparate treatment because of an established practice at the

Palestine Car Repair Facility which did require employees to report all injuries, its main complaints concerning the Carrier's action were procedural in nature. Specifically, the Organization maintains that the Carrier officer who charged the Claimant and then testified against him at the investigative hearing met with the conducting officer prior to the hearing, during which they shared and discussed documents that would be introduced into evidence. In this same vein, the Organization contends that they also discussed this case during periodic recesses of the hearing. Another procedural complaint of the Organization pertains to the notice of investigation which did not address the Claimant's so-called late reporting of an injury. Yet, the Organization submits, he was found guilty of failing to timely report his injuries on May 17, 1996 and February 4, 1997, despite the fact that the notice of investigation only alleged that his injury reports revealed he was careless and negligent and contained statements that were not factual. The Organization opines that if timeliness of these injury reports concerned the Carrier, it would have made reference to that concern in the notice of investigation. It is the Organization's position that since the Carrier failed to adequately apprise the Claimant that he was being charged with a violation of the reporting rule, it was improper to discipline him for an infraction that was never alleged.

On the basis of these procedural flaws, the Organization holds to the view that the Claimant's discipline should be set aside. Alternatively, the Organization also believes that, on the merits, no discipline was warranted because the Carrier had knowledge of the Claimant's injuries but never required him to officially report them.

The Carrier, arguing to the contrary, maintains that the Claimant was afforded his due process rights and received a fair and impartial hearing. In this regard, the Carrier asserts that the Organization's complaint that the notice of investigation was not sufficiently precise is immaterial. According to the Carrier, the Organization never complained that the Claimant's late reporting of his injuries was absent from the investigation notice. The Carrier believes, however, that the instant claim is directed to charges of which the Claimant was not found guilty and for which no discipline was assessed. Stated otherwise, the Carrier avers that the charge upon which his discipline was assessed were properly cited in the notice of investigation.

In denying any improper conduct between the Carrier officer who investigated the Claimant's late reporting and authorized the notice of investigation and the officer who held the hearing, the Carrier acknowledges that they had a brief "informational meeting" prior to the hearing but only for the purpose of identifying documents to be produced as evidence. From the Carrier's perspective, the fact that the Claimant was not disciplined for all the rule violations cited against him is added proof that the investigative process in this instance was fair and impartial.

As for the merits of the case, the Carrier submits that the evidence of record clearly demonstrates that the Claimant was aware of the injuries he sustained at the workplace and did not report them immediately to supervision or timely complete the required injury report. On this point, the Carrier denies that supervision at the Palestine Car Repair Facility ever dissuaded the Claimant, or any other employee, from filling out any personal injury report.

In sum, the Carrier considers the Claimant's failure to report his injuries in a timely manner to be a serious rule violation - especially in light of the lawsuit he subsequently brought against the railroad seeking damages for the injuries of May 17, 1996 and February 4, 1997, which were described as "permanent and severe." Because of the nature of the violation, the Carrier contends that he was properly assessed a Level 2 discipline consistent with its UPGRADE policy. Accordingly, the Carrier urges this Board to deny the instant claim in its entirety.

Here, the decision turns on the Organization's procedural complaints regarding an imprecise notice of investigation and the pre-investigative hearing between the Carrier officer charging the Claimant and the officer responsible for conducting the hearing. Although the notice of investigation cited Rule 1.2.5 as having been possibly violated by the Claimant, the notice contains no allegation relative to his failure to timely file a report on each injury he sustained on the days in question. Instead, this notice expressly indicated that the nature of the Carrier's inquiry involved the Claimant's carelessness and negligence resulting in these injuries. Moreover, the notice specifically indicated that the investigation would probe the Carrier's allegation that statements in his personal injury reports were not factual. The notice of investigation, however, mentioned neither explicitly nor impliedly that the personal injury reports at issue were untimely. In upholding this procedural complaint, the notice lacked specificity and must be considered flawed where the basis for the Claimant's discipline was solely predicated upon his filing untimely injury reports in violation of Rule 1.2.5.

Compounding the flawed notice of investigation is, in the Board's judgment, another irregularity which proves fatal to the Carrier's disciplinary action. This involves the ex parte meeting the charging officer had with the conducting officer prior to the investigative hearing to review and/or discuss documents that the Carrier planned to enter into evidence. Such a meeting should not have taken place outside the presence of the Claimant's representative. As a cardinal rule, any evidence that is to be produced at a formal investigation should not be shared with or brought to the attention of the conducting officer beforehand because of the perceived prejudicial and detrimental effect it can have on the charged employee's due process rights which includes a fair, objective and impartial hearing.

Without the need to consider the merits of the case, the Carrier's disciplinary action against the Claimant will be set aside and expunged from his personal record.

AWARD

Claim sustained.

ORDER

The Carrier shall comply with this Award within thirty (30) days from the date hereof.



Charles P. Fischbach
Chairman and Neutral Member



Dan Moresette, Carrier Member



Don Hall, Employee Member

Dated at Chicago, Illinois,
this 30th day of December, 1999