

PUBLIC LAW BOARD NO. 6237

**AWARD No. 13
CASE No. 13**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: January 10, 2003

DESCRIPTION OF CLAIM:

Claimant I. D. Martinez received Level 1 discipline in connection with an injury he sustained on January 28, 2002. Claimant held the position of Ballast Regulator Operator at the time and had approximately thirteen years of service. His prior work record contained a discharge per Rule 48 for five consecutive days of unauthorized absence.

The Claim seeks to overturn the discipline.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The review of the investigation transcript reveals no procedural shortcomings of significance. The notice did apprise Claimant of the nature of the charge. Moreover, examination of the transcript shows that all involved were well aware of the focus of the proceeding.

Carrier's Rule 76.25 requires that wrenches be used in a manner that results in force being applied by pulling toward the body whenever possible. Claimant sustained a minor strain to his abdominal muscle when he attempted to replace a #20 hydraulic hose on his machine. His chosen method required him to push on the wrench from a somewhat awkward body position. It is undisputed that he could have crawled under the machine and loosened the hose fitting in a manner that would have allowed for using a pulling force on his wrench. This was what another employee did to break the hose fitting loose.

It is further undisputed that ample time was available to accomplish the repair; there was no urgency. Claimant could have waited for help. Claimant admitted that he never considered going under the machine.

In view of the foregoing, the Board finds the record to contain substantial evidence in support of the Carrier's action.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member

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