

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 163
UNION PACIFIC RAILROAD COMPANY) Award No. 157
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: March 23, 2009

STATEMENT OF CLAIM:

1. The discipline (Level 2) imposed upon Foreman Alfredo Montes for violation of General Code of Operating Rule 1.2.5 in connection with failure to file a personal injury form immediately after injury occurred is unjust, unwarranted and in violation of the Agreement (System File J-0848U-255/1496974).
2. As a consequence of Part 1 above, we request dropping of all charges against Mr. Alfredo Montes and the removal of any mention of this incident from his personal record.

FINDINGS:

Public Law Board No. 6402 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On November 29, 2007, Carrier notified Claimant to report for a formal investigation on December 7, 2007, concerning his allegedly failing to file a personal injury report immediately after the injury occurred. The hearing was postponed to and held on January 9, 2008. On January 16, 2008, Carrier notified Claimant that he had been found guilty of the charge and assessed discipline at UPGRADE Level 2, one day alternative assignment with pay to develop a corrective action plan.

The record reflects that on October 20, 2007, Claimant was dumping ballast. This

required him to walk three or four miles on uneven terrain. Claimant noticed that his heel was sore and he so remarked to the Manager Track Maintenance. The soreness persisted and Claimant sought a referral through his health insurance to a specialist. The earliest appointment he could obtain was for November 7, 2007. At the appointment, x-rays revealed that Claimant had sustained a stress fracture. He reported the injury to the MTM the same day and the MTM had him complete the required form the following day.

Carrier maintains that Claimant was required to report the injury and complete the form on October 20, the date of the injury. However, Claimant testified that on October 20, he did not know he had been injured. He related, "I'm an old guy. I get up in the morning; everything hurts, everything was just sore, so I went home." According to Claimant, he was unaware of the injury until the doctor advised him of the X-ray results on November 7.

Given the strenuous nature of Claimant's job, his attributing his heel discomfort to general soreness rather than a personal injury seems eminently reasonable. Most significantly, the MTM corroborated Claimant in every respect. Specifically, the following exchange took place between the MTM and the Hearing Officer:

- Q. . . . November 7th you say Mr. Montes arrived on the property with an immobilization cast. Is that correct.
- A. That's correct.
- Q. And that is when you - the Company was notified that he had been - sustained a personal injury?
- A. Yeah. Up to that point he didn't - he didn't know it either.

The record supports only one conclusion. On October 20, Claimant had no reason to realize that he had sustained a personal injury. He did not learn that he had sustained a personal injury until he was advised of the X-ray results on November 7. As soon as he was so advised, he promptly reported the injury to the MTM and, at the MTM's direction, completed the required form the following day. There is simply no evidence in the record to support the finding of guilt made on the property.

AWARD

Claim sustained.

ORDER

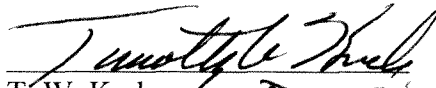
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke
Employee Member

June 23, 2009

Dated at Chicago, Illinois, June 23, 2009