NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402

ROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 19
and)
) Award No. 10
UNION PACIFIC RAILROAD COMPANY)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
C. M. Will, Carrier Member

Hearing Date: January 21, 2002

STATEMENT OF CLAIM:

1. The discipline (Level 5 dismissal) assessed Machine Operator R. Q. Jefferson for his alleged dishonesty in filing an injury report was without just and sufficient cause and in violation of the Agreement (System File MW-01-31/1251092).

2. As a consequence of the violation referred to in Part (1) above, Machine Operator R. Q. Jefferson shall now be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the incident and he shall be compensated for all wage loss suffered. Mr. Jefferson shall also be reimbursed for all expenses incurred on the day of the investigation.

FINDINGS:

Public Law Board No. 6402, upon the whole record and all 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 September 7, 2000, Carrier notified Claimant to report for an investigation on September 19, 2000, in connection with his alleged dishonesty in falsifying a personal injury report on June 12, 2000. The hearing was postponed to and held on September 26, 2000. On October 19, 2000, Carrier informed Claimant that he had been found guilty of the charge and dismissed from service.

The Organization has raised a number of procedural objections. None provide a basis for disturbing the discipline. Only one requires specific discussion.

The personal injury report that was the subject of the investigation concerned an alleged

knee injury reported to have been sustained on or about January 11, 2000. On July 7, 2000, Carrier notified Claimant to report for an investigation on July 27, 2000, concerning his not reporting the alleged injury until June 12, 2000. That notice resulted in a formal conference/training by mutual consent of all parties. The conference focused on Claimant's late reporting of the personal injury and discussed Rule 1.2.5. The Organization contends that the September 7 notice and subsequent investigation placed Claimant twice in jeopardy for the same offense. We do not agree.

The July 7 notice and subsequent conference concerned the charge of late reporting of the personal injury. The September 7 notice and investigation concerned the charge of dishonesty in reporting the personal injury. Although both notices arose from the same personal injury report, they concerned entirely separate offenses. In Case No. 25, Award No. 2, we sustained a claim where Carrier had charged the claimant with late reporting of a personal injury but convicted him of dishonesty. We held that late reporting and false reporting are two separate offenses and that, upon giving the claimant notice only of a charge of late reporting, Carrier could not convict him of false reporting. In accordance with our holding in Award No. 2 that late reporting and false reporting are separate offenses, we hold that Carrier's September 7, 2000, notice and subsequent investigation of the charge of dishonesty in reporting the personal injury did not place Claimant twice in jeopardy for the same offense, even though he already had been disciplined for failure to report the injury in a timely manner.

Accordingly, we turn to the merits of the charge. Carrier argues that it proved the charge by substantial evidence. Carrier relies on the delay of five months between the date of the alleged injury and Claimant's report of it and Claimant's medical records which show that he was treated for knee pain on March 19, 2000, and reflect that bilateral knee pain had onset over one year previously. Carrier concludes that Claimant's June 12, 2000, report of a knee injury on January 11, 2000, was false.

Claimant testified and explained that he struck his knee on the spike tray holder on the spiker he was operating on or about January 11 or 12, 2000. He related that he did not feel he was injured badly enough to report the incident. According to Claimant, he treated himself with various ointments but over the next two months the knee worsened, and the pain forced him to go to the emergency room at Baylor Medical Center on March 19, 2000. He was given pain medication and he advised his supervisor of the medication but did not ask to complete a personal injury report. The knee continued to worsen and Claimant was advised that he needed surgery. Not knowing what to do, he spoke with his union representative and his supervisor who told him to complete the personal injury report. He did so on June 12, 2000.

All evidence in the record is consistent with Claimant's explanation. Claimant testified that he was not sure of the exact date of the injury and the injury report reflects that uncertainty. The other Spiker Operator testified that he witnessed Claimant strike his knee on the spiker tray, and that Claimant told him he was hurting. The other Spiker Operator related that he did not report the incident because he did not know Claimant was hurt badly. The Spike Puller Operator testified that on the date in question he observed Claimant limping and Claimant told him that he

had hit his knee on the spiker while he was working. Claimant's supervisor testified that over the course of the next few months he observed Claimant limping. The supervisor also corroborated Claimant's testimony about informing him of the pain medication Claimant was taking.

Carrier places heavy reliance on the March 19 medical report which relates that Claimant's knee pain had onset over a year previously. However, the same report further relates that Claimant stated the pain had gotten progressively worse over the prior month. Read as a whole, the report is consistent with Claimant's explanation of his delay in reporting the injury.

Claimant clearly was wrong in deciding not to report the injury on the day it occurred. Carrier has the right to require and does require employees to report all injuries before the end of the shift on which they occur. It is not for the employee to decide that the injury is too minor to bother reporting. The facts of this case illustrate precisely why Carrier requires such prompt reporting. Injuries that appear minor at the time may manifest themselves more severely over time. Thus, Claimant clearly violated Rule 1.2.5 by not reporting his injury promptly. Claimant has already been disciplined for that violation. However, Carrier's determination that Claimant was dishonest when he reported the injury is not supported by substantial evidence. Therefore, the claim must be sustained.

The claim seeks, among other relief, that Claimant be compensated for expenses incurred in attending the investigation. There is no support for such relief in the Agreement. It has long been established on this property that, absent an express Agreement provision for payment of expenses incurred in attending an investigation, such payment is not required even where the claim is sustained. See NRAB, Third Division Award No. 4834. Accordingly, we shall sustain the claim except for the request that Claimant be reimbursed for expenses incurred on the day of the investigation.

AWARD

Claim sustained in accordance with the Findings.

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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

C. M. Will,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, May 30, 2002.