NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 114
and	)
	) Award No. 92
UNION PACIFIC RAILROAD COMPANY	)
	)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: January 7, 2008

STATEMENT OF CLAIM:

Claim on behalf of G. E. Jackson to remove the charge letter dated May 18, 2006, whereby Mr. Jackson was alleged to be in violation of Rule 1.6 Conduct and (1) Careless of Safety, and (4) Dishonest and Rule 1.2.5 (Reporting) that he be reinstated immediately with all vacation rights, seniority rights, all pay for all lost time starting on May 8, 2006, on a continuing basis and days to be used as qualifying days for vacation purposes and all other rights due him under our collective bargaining agreement account the carrier has failed to meet their burden of proof.

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 May 19 2006, Carrier notified Claimant to report for a formal investigation on June 8, 2006, concerning his alleged dishonesty in claiming an injury sustained sometime in April and his alleged carelessness of his safety in turning his TKO without requesting assistance, in violation of Rules 1.6(1) and (4) and 1.2.5. The hearing was held as scheduled. On June 21, 2006, Carrier advised Claimant that he had been found guilty of the charges and dismissed from service.

We have reviewed the transcript carefully. Despite the Organization's arguments to the contrary, we find that Claimant was afforded a fair and impartial investigation. We see no procedural basis for upsetting the discipline.

The record reflects that Claimant, a Machine Operator assigned to the TKO, was working compressed halves. He last worked on April 30, 2006, and his new half began on May 8, 2006. On May 8, he told his supervisor that he had seen a doctor, had a ruptured disk and needed to complete a personal injury report form. He advised his supervisor that the injury must have occurred on duty because there was no other way it could have happened. He also indicated that he had hurt his back turning the TKO by himself. The supervisor testified that he had instructed Claimant to always ask for assistance in turning the TKO.

Claimant acknowledged that Rule 1.2.5 requires reporting of on-duty injuries immediately. When asked why he did not report his injury prior to May 8, he replied, "I thought it was going to go away." The Rule, however, requires that the injury be reported promptly; it does not allow the employee to wait to see if the pain goes away. Indeed, when asked why he believed that his back problem was the result of an on-duty injury, Claimant responded:

> I'm sure of it. We was – we turned them things more than normal and uh – and uh – you know, the severe pain I had, you know, it started up there and started within there.

Carrier has a right and a duty to ensure employee safety. Immediate reporting of on-duty injuries is critical to Carrier's ability to assess situations and take corrective action to ensure employee safety. Carrier clearly proved the violation of Rule 1.2.5 by substantial evidence.

We turn to the violation of Rule 1.6. Claimant maintained that he injured his back turning the TKO by himself. Claimant also acknowledged that he had been instructed to ask for assistance when turning the TKO. He claimed that he did not ask for assistance because the gang was spread out, but he also acknowledged that he had a radio and could have called for assistance using his radio. There is simply no explanation as to why he failed to do so.

If Claimant's testimony is credited, he injured his back by turning the TKO machine by himself, in which case, by failing to request assistance in turning the TKO, he clearly was careless of his own safety in violation of Rule 1.6(1). If Claimant did not injure himself turning the TKPO without assistance, then he was dishonest in claiming otherwise on his personal injury report, in violation of Rule 1.6(4). Indeed, there is no documented medical evidence from Claimant that he had a ruptured disk. The only medical evidence in the record concerns Claimant's hypertension. Clearly, Carrier proved by substantial evidence that Claimant violated Rule 1.6.

The penalty imposed was in keeping with Carrier's UPGRADE. We cannot say that it was arbitrary, capricious or excessive.

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Award 92

AWARD

Claim denied.

Martin H. Malin, Chairman

B. W. Hanquist
Carrier Member 4-22-08

T. W. Kreke
Employee Member 4-22-08

Dated at Chicago, Illinois, April 17, 2008