

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6302
AWARD NO. 212, (Case No. 221)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs

UNION PACIFIC RAILROAD COMPANY

William R. Miller, Chairman & Neutral Member
K. D. Evanski, Employee Member
P. Jeyaram, Carrier Member

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The discipline [Level 3, five (5) day suspension] imposed upon Track Laborer R. M. Schulz for violation of Rule 1.2.5 (Reporting) as contained in the General Code of Operating Rules (GCOR) in connection with his failure to notify his supervisor of an alleged injury is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File B-1048U-103/1546024D).**
- 2. As a consequence of the violation referred to in Part 1 above, we request that Mr. Schulz shall have the charges against him and the assessed discipline stricken from his record and be compensated at his applicable rate of pay for all time lost as a result of the discipline assessed."**

FINDINGS:

Public Law Board No. 6302, 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 October 6, 2010, Claimant was directed to attend a formal Investigation on October 12, 2010, which was mutually postponed until December 1, 2010, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as Laborer on Gang 9048, at Proviso Yard, Illinois, on August 2, 2010, and August 3, 2010, you allegedly failed to notify your supervisor of an alleged injury. In addition, you allegedly provided false information on the 52032 Personal Injury Report, which was completed on October 1, 2010, pertaining to this injury.

These allegations, if substantiated, would constitute a violation of Rule 1.6, Part 2 (Negligent), and Rule 1.6, Part 4 (Dishonest), and Rule 1.2.5 (Reporting), as contained in the General Code of Operating Rules, effective April 7, 2010, and the System Special Instructions, effective April 7, 2010. Please be advised that if you are found to be in violation of this alleged charge, the discipline assessment may be a Level 5, and under the Carrier's UPGRADE Discipline Policy may result in permanent dismissal."

On December 21, 2010, Claimant was notified that he had been found guilty as charged and was assessed a Level 3 discipline with a five day suspension.

It is the Organization's position that the Carrier failed to meet its required burden in this case. It asserted the Carrier was obligated to present substantial evidence that Claimant failed to properly report his on-the-job injury on August 2 or 3, 2010, pursuant to General Code of Operating Rule (GCOR) 1.2.5. It argued the record reflects that the Carrier failed to establish that Claimant knew he was injured on August 2 or 3, 2010. As such, the Carrier did not show that Claimant knowingly violated any Operating Rules and because of that it concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that immediately following the derailment of Claimant's machine on August 2 and 3, 2010, the Claimant began to experience bodily pain. Claimant continued to work with pain until his vacation started on September 1st. By September 7th, the pain became so bad that Claimant saw his physician. On September 9th, the physician diagnosed the Claimant's pain as a fractured vertebra and herniated disk. Claimant reported the injury and was counseled by his Supervisor Yoast, on the proper way to complete Carrier Form 52032 on September 24th. Claimant returned the completed form to Mr. Yoast on October 1, 2010. From the time Claimant was injured in early August until the time Form 52032 was officially submitted, two months had past, therefore, according to the Carrier, Claimant violated Rule 1.2.5 and was appropriately assessed a Level 3 Suspension. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the record and determined that the Claimant received a "fair and impartial" Hearing and was afforded his Agreement "due process rights", therefore, the dispute will be resolved on its merits.

Review of the Claimant's testimony and Carrier Form 52032 Report of Personal Injury or Occupational Illness made out by the Claimant and submitted during the Hearing indicates the Claimant allegedly suffered a back injury on either August 2 or 3, 2010, after multiple derailments occurred when he was operating his machine an Operating Tie Inserter. Claimant did not fill out Form 52032 until October 1, 2010, approximately two months after the alleged injury.

In its defense of the Claimant the Organization argued that the Claimant did not realize the severity of his injury until he visited his physician on September 7th. It further argued that Claimant did not file the injury report immediately after the accident because he thought the soreness in his lower back and legs was attributable to "old age". However, when he did fill out Form 52032 nearly two months had passed and assuming for the sake of argument he was not able to pinpoint the date of his injuries until September 7, 2010, it took 24 days before he reported the "on duty" injury.

The Organization also suggested that the Claimant was not required to report the alleged injury while on vacation. The Carrier responded to that argument in pertinent part as follows:

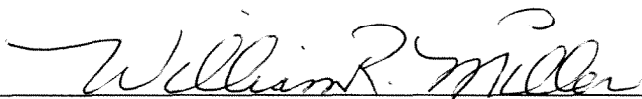
"...according to the Organization, 'The injured employee must also complete the prescribed written form before returning to service.' The Organization has mistakenly applied this language to the instant claim. This language only dealt with 'a personal injury that occurs while off-duty' and not for an on-duty injury as alleged by the Claimant. As the Claimant ultimately stated in the Carrier's form 52032, that alleged injury occurred in Proviso Yard while operating a Tie Insertor, he clearly indicated that this was an on-duty incident. For an on-duty injury, Rule 1.2.5 succinctly states, 'All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed written form completed.'"

The aforementioned Carrier's statement was not refuted nor has the Claimant offered a reasonable reason as to why it took 59 days to report his alleged on-duty injuries or why it took 24 days after visiting his doctor at which time he supposedly became aware that he had been injured on either August 2nd or 3rd. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

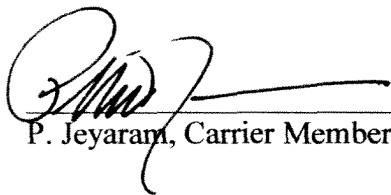
The only issue remaining is whether the discipline was appropriate. Review of the discipline reveals that it was in accordance with the Carrier's UPGRADE Discipline Policy, therefore, the Board finds and holds the discipline will not be set aside because it was not arbitrary, excessive or capricious.

AWARD

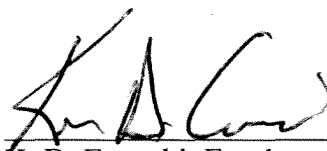
Claim denied.



William R. Miller, Chairman



P. Jeyaram, Carrier Member



K. D. Evanski, Employee Member

Award Date: Oct 10, 2012