

Public Law Board No. 4747

Claimant - J. L. Paulsen
Award No. 7

Case No. 7

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT OF CLAIM:

1. The Letter of Reprimand issued Laborer J. L. Paulsen for alleged violation of various company rules as indicated in Mr. T. J. Worthington's letter of April 22, 1991 is arbitrary, capricious and unwarranted.
2. Provided the sustaining of charges was correct, which it was not, the discipline assessed was excessive.
3. The claimant's record shall be cleared of the discipline referred to in Part (1).

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Public Law Board is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant was working as a Laborer on Extra Gang 9011 on

May 15, 1990. On this day, he was allegedly injured when lightning hit the rails and passed through the machine he was operating.

Although an Injury Report which was submitted by the Claimant nearly a year later cited the date of the incident as June 14, 1990, more reliable evidence supports the date of May 15, 1990. At the time, he reported to the acting Track Supervisor, who was officially the Gang Foreman, that he did not feel well and wanted to be examined by a doctor. He began filling out an Injury Report, but may not have finished it. He went to the hospital on May 16, 1990, where he was examined and released. After apparently getting a clean bill of health, the Injury Report was never submitted. The acting Track Supervisor at least concurred with the decision not to submit the report.

On or near June 12, 1990, the Carrier's casualty department received a bill from the Lawrence Memorial Hospital for the treatment the Claimant received on May 16, 1990. Since they did not have a Personal Injury Report on file, they questioned the appropriate Supervisor who explained that because of some lightning in the area in which the Claimant was working on May 15, 1990, he asked to be checked by a doctor. Since he was given a clean bill of health by the hospital, no Injury Report was filed. Without further investigation, the Carrier paid the bill.

According to the Claimant, he continued to have problems which required medical attention. Since the appointments were going to take considerable time, he became concerned about not

being paid for the time he had to take off from work. It was then he contacted the Casualty Management Representative. She advised him that because he had not filed a Personal Injury Report, he would not be compensated for the time off work. After hearing this, the Claimant filed, what he contended was the second Injury Report he had filed on the incident. This last report was filed on March 22, 1991.

When the Carrier received the report, the date of injury was listed as June 14, 1990. A date which did not correspond to the dates on which the Claimant was examined. Regardless, since the report was filed over ten months after the accident, the Carrier sent the Claimant a charge letter advising him to attend a formal Investigation to determine if he had violated the following Rules:

GENERAL RULES

A. Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

B. Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.

Employees must be familiar with and obey all rules and instructions and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules may be issued, canceled or modified by general order, timetable or special instructions.

When authorized by superintendent, general orders or special instructions may be canceled, modified or issued by train order Form Q or track bulletin.

E. Accidents, personal injuries, defects in track, bridges or signals, or any unusual condition which may affect the safe and efficient operation of the railroad, must be reported by the first means of communication. Written report must follow promptly when required.

I. Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

4000. SAFE COURSE: In cases of doubt or uncertainty the safe course must be taken; in all cases, the safest available methods must be followed.

4001. TAKING PRECAUTION: Employees must take every precaution to prevent injury to themselves and other persons under all conditions not provided for by the rules.

After reviewing the transcript of the hearing, the Carrier decided the charges against the Claimant were substantiated and he was issued a Letter of Reprimand.

The evidence presented in this case is such that significant doubt is cast on the credibility of the acting Track Supervisor. The evidence strongly suggests, that even if the Claimant agreed not to submit the original injury report, he did so under duress. It is obvious the acting Supervisor was upset at the possibility that the safety record of his gang would be

in jeopardy. This is substantiated by the entry in his diary for May 15, 1990, which reads: "PI Jerry (Claimant) trying to hang gang". It is further reinforced by the Supervisor's own reluctance to file an Injury Report even though he, too, claimed he was hit by lightning on that same day. While this Board realizes the importance of safety in the field, we also recognize the validity in assuring the submission of factual injury reports when they are required. It does little, if any, good in the long run for Supervisors to encourage the concealment of on-the-job injuries. First, it isn't fair to employees who may have been injured. Secondly, there can be no improvement in the area of safety, if the reasons for injuries cannot be examined and solutions developed.

The Board is not convinced the Claimant agreed not to submit the Injury Report on May 15 or 16, 1990, but even if he did, it was through the encouragement of his Supervisor. It is the Supervisor who should be held accountable. It is simply unfair to discipline the Claimant for not submitting a report his Supervisor discouraged him from submitting. Furthermore, the other charges against the Claimant lack foundation.

Incidentally, it makes no difference to this Board that the acting Supervisor was actually a Gang Foreman who was promoted after the incident. Given the timing of his promotion, it is obvious the Carrier deemed him knowledgeable and responsible enough to hold the Supervisory position.

AWARD

The claim is sustained.

A handwritten signature in cursive script, reading "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Impartial Neutral

Submitted:

September 30, 1991
Denver, Colorado