

PUBLIC LAW BOARD NO. 4998

Award No. 112

Case No. 112

Parties United Transportation Union
to and
Dispute Union Pacific Railroad Company

Statement of Claim: Claim for Idaho Conductor R. K. Frank, for reinstatement to service, pay for all time lost, and all entries of UPGRADE Discipline Level 3 removed from his personal record.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, on August 25, 1996, was working in charge of GEPDPC-22. The train stopped at Ontario, Oregon at MP 496.9. As the Claimant detrained the ground crumbled under his feet and gave way forcing him to run down the hill in order to maintain his balance. His Engineer, J. D. Simmons, called out the window to the Claimant to see if he was okay. The Claimant replied that he was but added "that maybe I was hurt, that I had pain." He then got back on the train without reporting the incident. When the Claimant arrived at Nampa, his final terminal, he indicated that both his knees had tightened up. The Claimant set out a motor before reporting the on duty injury, some 2 hours after the occurrence of the alleged injury. The Claimant then sought medical attention therefor.

The Claimant Conductor was later notified that he was charged with:

"concerning the following alleged incident while you were employed as Conductor on the GEOPOPC22 at approximately 2300 PM MT on 8/25 near MP 496.9, Ontario, OR, you allegedly failed to report your personal injury to the Dispatcher from the first means available as required by General Notice 12..." (emphasis added)

The Carrier concluded from the September 16th investigation that the Claimant was culpable of the charge which caused an instant Level 2 discipline to be added to his existing Level 3 status thereby making his

discipline status a Level 4 (30 day suspension and plus that he pass a Corrective Action Plan upon return and necessary annual operating rules or equivalent in order to return to work.

Case 112 is the split and companion case to our Case No. 111 that resulted in our Award No. 111. In Award No. 111, the Carrier committed an egregious procedural error because it failed to explain what was meant by the referred to term "incident of August 25, 1996" in order to make an appropriate charge(s) so that the Claimant would know just what he was being charged with and prepare a defense therefor. There the Carrier in its Notice of Investigation identified only the date and place where the incident occurred but was most notably silent about the incident itself. Carrier then proceeded to assert five (5) conclusory phrases, apparently, based on its preliminary inquiry and an on ground review of the entire incident, August 25 which reflected when, where and how the alleged injury(s) occurred. The phrases were aimed at the Claimant's work conduct or work performance ostensibly to produce the charge aspect with no relevance being shown between such conclusory phrases used and the undefined incident of August 25, 1996. Our Board found the procedural error egregious and sustained the Award as Per Findings.

The only actual incident of record that occurred at Ontario, Oregon, August 25, 1996 was, in essence, a road train stopped at an intermediate point to set off some cars and the Claimant Conductor detrained therefrom. An alleged injury or injuries and injury report resulted after his detraining.

Here, in Case 112, the Carrier framed its charge:

"you failed to report your personal injury incident to the Dispatcher from the first means available as required by General Notice No. 12."

The Board's procedural review of the entire record impels it to conclude that Carrier's abuse of process causes the Board to be unable to reach the merits because the Carrier, as in Award No. 111, again committed an egregious procedural error. The Carrier, in effect, chose to carve out the alleged failure to report the injury, as required by the Boise Service Unit's General Notice No. 12, aspect from the actual "incident occurring on August 25, 1996 while employed as a Conductor on Train GEPDPC22 at 10:45 PM," and to use it as a basis for a charge in its split

or second Case No. 112. That's taking two bites from the same apple. However, the Carrier who has control and direction over the disciplinary process except to the extent of limitation created by the UTU's Discipline Rules, chose to exclude the issue raised herein from Case No. 111 and thereby forfeited its right to raise it thereafter. The issue here raised was a fundamental and integral part of the involved incident of August 25, 1996.

This claim will be sustained and the pay for time lost is limited to the time held out of service, attending the investigation and time actually served as discipline.

Award: Claim sustained as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


R. E. Carter, Employee Member


D. J. Gonzalez, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 28, 1998.