PUBLIC LAW BOARD NO. 5483

PARTIES	UNITED TRANSPORTATION UNION	)	
		)	AWARD NO. 40
TO	AND	)	
		)	CASE NO. 40
DISPUTE	PADUCAH & LOUISVILLE RAILWAY, INC.	)	

STATEMENT OF CLAIM:

Claim of Brakeman S. A. Kinchloe, Louisville, KY, for payment of all time lost when suspended from service for period of ninety (90) days, subsequent to investigation conducted on August 12, 1996. Claim also includes payment for attending investigation and reimbursement of any and all out of pocket medical expenses incurred by the Claimant.

HISTORY OF DISPUTE:

On July 10, 1996 Claimant worked an assignment as Brakeman on Local CLC-1 from Cecilia, Kentucky to Louisville, Kentucky and returning to Cecilia. The last physical work Claimant performed prior to the end of his tour of duty was to throw the switch at the Russell Tracks at Cecilia. After Claimant went off duty and during his drive home he noticed some discomfort in his back. By the time he arrived home the discomfort had become noticeable pain to the point where Claimant applied a heating pad while resting on the couch, did not eat dinner and went to bed.

The following morning the pain was more severe, and Claimant reported early for his 11:00 a.m. assignment, spoke by telephone with the Trainmaster and arranged to have a form to report a personal injury faxed to him. Such forms were not available at Cecilia.

During his tour of duty on July 11 Claimant filled out the form and gave it to his Conductor who took it to Louisville at the end of the crew's tour of duty. The Carrier's Trainmaster, who was not on duty when the Conductor arrived in Louisville, received the personal injury report on the morning of July 12.

By letter of July 19, 1996 the Carrier notified Claimant to appear for formal investigation in connection with the incident. After postponements the investigation was held on August 12, 1996. By letter of August 21, 1996 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of not properly reporting a personal injury on July 10, 1996 in violation of Carrier operating Rule 840 and Safety Rule No. 1 for which he was suspended from the Carrier's service for a period of ninety days.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide

the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The Organization raises a number of procedural objections to the discipline in this case. However, we find it unnecessary to address those objections in view of what we believe to be the lack of substantial probitive evidence in the record supporting the finding of guilt on Claimant's part.

Operating Rule 840 provides in pertinent part that "[E]mployees must make an immediate oral and written report to the supervisor or employee in charge of any personal injury suffered while the employee was on duty or on company property. . . ." Safety Rule No. 1 requires in pertinent part that "[E]mployees must report promptly to the proper authority any injury sustained on duty or on company property. . . ." We must agree with the Organization that both rules are subject to the proviso that the injured employee realize or have reasonable knowledge of an injury before the reporting requirements of the rules apply.

On July 10, 1996, the date the Carrier found Claimant failed to report a personal injury in violation of the stated rules, Claimant was unaware of any discomfort in his back until driving home. Even though the pain increased that evening, Claimant was off duty. When, on the morning of July 11 Claimant experienced substantially greater pain and related it to throwing the switch to the Russell Tracks, Claimant reported to work early in an attempt to secure a personal injury form which was not available at Cecilia.

PLB NO. 5483
AWD NO. 40

Whatever may be said of the content of the conversation between the Trainmaster and Claimant on the morning of July 11, which is in serious dispute, the fact remains that on July 10 the duty to report an injury which is the subject matter of operating Rule 840 and Safety Rule No. 1 had not arisen. Accordingly, the record does not substantiate Claimant's guilt. It follows that the claim has merit.

AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.

William E. Fredenberger, Jr.
Chairman and Neutral Member

J. D. Shepherd
Carrier Member

B. R. Wigent
Employee Member

DATED:
8-4-99