

PUBLIC LAW BOARD NO. 7633

Case No.: 43/ Award No.: 43
System File No.:UP445WF14/1598190D MPR
Claimant: J. D. Holbrook

UNION PACIFIC RAILWAY COMPANY)
(Former Missouri Pacific Railroad))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)

Organization’s Statement of Claim:

1. The discipline [five (5) day suspension] imposed on Mr. J. Holbrook for the alleged violation of General Code of Operating Rule (GCOR) 1.2.5 in connection with allegedly failing to properly report an injury conviction (sic) on November 4, 2013 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP445WF14/1598190D MPR).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, the Claimant must now be compensated for all losses suffered as a result of the Carrier’s unjust discipline and afforded any other remedy prescribed by Rule 22(f).

Facts:

By letter dated November 25, 2013 the Claimant was directed to attend a December 3, 2013 “investigation and hearing on charges to develop the facts and place responsibility, if any, that while employed as M/W Machine Operator on Gang 1060, at Marshal, Texas, near Milepost 65.5, at approximately 1800 hours, on November 4, 2013, you allegedly failed to report a personal injury that you claim occurred on October 6, 2013, at Railroad Station Valley Junction, near Hearne, Texas.” The letter noted that a proven charge would involve a violation of Rule 1.2.5 Reporting, which could result in Level 3 discipline of up to five (5) days off work without pay or, alternatively, one (1) day’s training without pay and the development thereafter of a Corrective Action Plan.

Carrier Position:

The Carrier has proven the charge with more than the required substantial evidence.

The Claimant was injured on October 6, 2013 and did not report the injury or fill out the required form until 28 days later, thus violating Rule 1.2.5 Reporting. The Claimant knew the rule and his reporting responsibility. Soreness beginning later on the day of the injury was not immediately reported although a phone call would have sufficed that evening. The report of soreness the next morning was not immediate, nor was the seven days the Claimant waited to ask about filling out an accident report. The Level 3 discipline, five (5) day suspension was reasonable in view of the investigation testimony and there were no mitigating factors that prevented immediate reporting of the injury, as the Claimant continued to work that day and seven more over the next 28 calendar days before reporting the injury. The Claimant was afforded a fair and impartial hearing and the Carrier properly adhered to the UPGRADE discipline policy. Therefore the Board should not disturb the discipline.

Organization Position:

The Carrier has not met its burden of proof. The Claimant was not accused of falsifying a personal injury, but was charged only with failing to report the injury. However, there is absolute proof that he reported the injury on November 4, 2013. He immediately reported the accident and his subsequent soreness. He reported the injury when it became apparent, after previously informing Foreman Harris of his discomfort on the morning after the accident. Neither the Claimant nor Foreman Harris attributed the soreness to a personal injury. Injuries do not always appear immediately. The injury was reported immediately after the Claimant became aware of it, having spoken with the nurse, and he completed the required form. The Carrier's contention that the Claimant requested a medical evaluation after disqualification from the ballast regulator is a red herring, as there is no issue of dishonesty and the disqualification was later rescinded. There is no demonstrated connection between the disqualification and the alleged rule violation. The Claimant did not wait to report a known injury as he had reported his discomfort and did not believe he was injured prior to November 4, 2013. In accordance with common practice, he used rest and vacation days to try to obtain relief following the October 6, 2013 accident.

Even if a violation is found, the discipline was inappropriate. The Claimant timely reported his soreness and later reported the injury when it became apparent. Discipline was assessed only because of the injury and not because of the rule violation.

Findings:

GCOR 1.2.5 states in relevant part, "All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed." As noted in the NRAB 2nd Division Awards 7703 and 9530 and Public Law Board No. 4219 Award No. 5, injuries are not always immediately apparent after the incidents that caused them. Even though the Claimant told Foreman Duncan on the evening of October 6, 2013 that he was getting sore the Board finds no violation of Rule 1.2.5 at that point. The Claimant acted reasonably when he did not

consider the soreness an injury and did not associate the soreness with the accident that had occurred earlier that day.

The next morning, according to Foreman Harris, when asked the Claimant said that he was fine. The Claimant recalled that on the morning of October 7, 2013 he told Foreman Harris that he was sore. Machine Operator Ortega recalled that when asked, the Claimant said he was "sore as hell" and the conversation turned to the day's work. The Board finds it unnecessary to consider exactly what was said. The Claimant's soreness continued into November and on November 4, 2013, he sought medical attention. During the investigation, in response to Conducting Manager Dunnan's question, "Do you feel you were injured on the 6th?", the Claimant answered, "Yes, I feel like I was injured on October 6th" (TR, p. 69, ll. 23 and 29). While it is possible that the Claimant awoke on November 4 and for the first time associated his continuing soreness with the October 6 accident, the Board believes it is even more likely that there were times during the month after the accident when the Claimant wondered if the accident and soreness were related. Waiting until November 4, 2013 to report the injury clearly violated the requirement to report it immediately and justified the suspension.

Award:

Claim denied.

Order:

The Board, having considered the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Andrew Mulford, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
December 14, 2015