

NATIONAL MEDIATION BOARD

**PUBLIC LAW BOARD NO. 6402
AWARD NO. 129, (Case No. 150)**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs

UNION PACIFIC RAILROAD COMPANY

**William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member**

Hearing Date: September 23, 2009

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Level 2 UPGRADE discipline assessment (one day alternative assignment with pay to develop a Corrective Action Plan) to Mr. K. R. Stafford for an alleged violation of Union Pacific Rule 1.2.5 (Reporting) in connection with his failure to report a personal injury sustained by him on December 2, 2007 was not justified. (System File MW-08-78/1505967D MPR)
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall have the charges be dropped and that Mr. Stafford have his personal record cleared of all charges."

FINDINGS:

Public Law Board No. 6402, 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 February 4, 2008, Carrier notified Claimant to appear for a formal Investigation on February 12, 2008, which was mutually postponed and subsequently held on April 15, 2008, concerning the following charge:

"Please report to the Sosan Office, at 1711 Quintana Road, San Antonio, Texas, on Tuesday, February 12, 2008, at 0900 hours, for investigation and hearing

on charges to develop the facts and place responsibility, if any, that information received on January 27, 2008, revealed that while employed as a Machine Operator, on Gang No. 3061, at San Antonio, Texas, near the North Loop, on December 2, 2007, it was discovered that you allegedly failed to report a personal injury made to yourself.

Your alleged actions indicate possible violation of Rule 1.2.5 (Reporting), as contained in the General Code of Operating Rules, effective April 2, 2005, and in the Revised System Special Instructions, effective July 30, 2007. Please be advised that if you are found to be in violation of this alleged charge, that discipline may be assessed as a Level 2 charge."

On April 22, 2008, Claimant was notified that he had been found guilty as charged and was assessed a Level 2 Discipline which requires up to one day alternative assignment with pay to develop a Corrective Action Plan to modify behavior.

It is the Organization's position that there is no dispute that the Claimant sustained a personal injury on December 2, 2007, but that the charge brought against him was not for failure to timely report a personal injury, but only that he failed to report a personal injury to himself. It argued that the Transcript of the Investigation proves that the Claimant did report his personal injury. Consequently, there can be no doubt that the Carrier failed to meet its burden of proof and it asked that the discipline be set aside.

It is the position of the Carrier that Claimant was afforded a fair and impartial Investigation were it was proven that Claimant was injured on December 2, 2007 and did not report that injury until January 26, 2008. It concluded that the discipline was appropriate and requested that it not be disturbed.

The Board has reviewed the record and finds that the Organization makes an interesting semantics argument based upon the theory that Claimant was charged with failure to report an personal injury rather than not having done it in a timely manner and subsequently disciplined for the latter. If you parse the last sentence of the first paragraph of the charges there is some merit to the argument, but that innovative argument fails when the entire sentence is read. It also fails after reading the testimony of the Hearing, wherein it is clear that the Claimant and the Organization understood that the Claimant was being investigated on whether or not he reported his injury in a timely manner.

Turning to the merits the record reveals that Claimant at the time of the incident was employed as a Machine Operator and had been in the service of the Carrier a little over 11 years. On January 26, 2008, Claimant filed an on the job injury report alleging he was hurt on duty while on company property on December 2, 2007. He reported he hurt his left arm while attempting to remove a spike from the track with a lining bar. The record also indicates that prior to reporting the injury, he had a MRI and received medication for his injury. According to the Claimant that until he received the results of his MRI on or about January 17th he thought he was suffering from arthritis and not an injury. He testified

that he then contacted Track Supervisor Warnke on either January 18 or 19, 2008 and completed a personal injury report on January 21 which was faxed to the Director of Track Maintenance on January 26th.

Rule 1.2.5 (Reporting) states in pertinent part the following:


"All cases of personal injury, while on duty or on Company property, must be immediately reported to the proper manager and the prescribed form must be completed." (Underlining Board's emphasis)

The Claimant was aware of some pain on December 2, 2007, which was verified by his testimony and his injury report wherein he wrote: "...the bar slipped off the head of the spike causing a jerking in my left arm". The aforementioned Rule is clear and unambiguous Claimant should have reported the alleged injury at that time rather than waiting 55 days until according to him he was positive as to the source of his injury. The Carrier has proven that the Claimant was guilty as charged.

As to the appropriateness of the discipline the Board finds and holds that the issuance of a Level 2 Discipline in this instance was both progressive and corrective in nature for the proven offense, and will not be disturbed.

AWARD

Claim denied.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: 12/9/09