

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 203, (Case No. 227)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
K. D. Evanski, Employee Member
K. N. Novak, Carrier Member

QUESTION AT ISSUE:

Did the Carrier comply with Rule 22 of the General Agreement when it charged A. B. Watkins with violation of Rule 1.2.5 Reporting of the General Code of Operating Rules, effective April 7, 2010, and was substantial evidence adduced at the Investigation on July 1, 2013, to prove the charges; and was the discipline assessed in the form of a Level 4 warranted?

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.

On June 21, 2013, Claimant was directed to attend a formal Investigation on July 1, 2013, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as Brandt Power Unit Operator on Gang 9450, at Abilene, Texas, near Milepost 446.1, at approximately 1100 hours, on June 4, 2013, you allegedly reported late an injury that occurred in December, 2012.

These allegations, if substantiated, would constitute a violation of Rule 1.2.5 Reporting, as contained in the General Code of Operating Rules, effective April 7, 2010, and System Special Instructions, effective April 20, 2012."

On July 11, 2013, Claimant was notified that he had been found guilty as charged and was assessed a Level 4 discipline.

On August 8, 2013, the Claimant requested that his case be handled under the expedited provisions of Public Law Board No. 6402 wherein a decision will be based upon the Notice of Hearing, Transcript of the Hearing, Notice of Discipline, Claimant's Service and Discipline Records and the applicable Discipline and/or Grievance Rules of the parties Agreement.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

The facts indicate that on December 19, 2012, the Claimant was employed as a Brandt Power Unit Operator on Gang 9450, and was working near Hearne, Texas. On that date the Claimant was grabbing plates from the conveyor and dropping them to the ground. Subsequently, on that same day the Claimant had a conversation with several co-workers including Track Supervisor L. W. Gilford at which time the Claimant asked the other employees what does it mean if your hand tingles? On page 18 of the transcript Mr. Gilford read his statement regarding the incident of December 19th that stated in pertinent part:

"On December 2012, on the 19th, or around that time, as of my understanding of that day, Mr. Watkins was working on the Fort Worth Sub unloading the plates where I was also present. The gang had cleared up to let a Brandt truck go ahead to unload material. several employees were around just talking in conversation about the job at hand. Mr. Watkins walked up to everyone and asked the question: What does it mean when your hand tingles? So everyone gave their opinions and returned to work unloading tie plates. Mr. Watkins continued to work the rest of the day, never addressed to me that he had injured his hand."

Around March 2013, Mr. Watkins called me and told me had went to see his doctor and was told he had carpal tunnel. Mr. Watkins was on medical leave from April- the month of April, May 2013, and returned on June 4, 2013, stating that he wanted to file paperwork for the injury he had in December 2012. This was the first day that I had heard anything concerning injury from Mr. Watkins."

(Underlining Board's emphasis)

Track Supervisor Gilford's testimony was consistent with the aforementioned statement and was not effectively refuted nor was the testimony and statement of Mr. K. W. Stuart, Manager Track Programs rebutted which confirmed Mr. Gilford's testimony.

Carpal tunnel syndrome (CTS) is medically defined as a median entrapment neuropathy that cause parenthesis, pain, numbness and other symptoms in the distribution of the median nerve due to its compression at the wrist in the carpal tunnel. It appears to be caused by a combination of genetic and environmental factors. Some of the predisposing factors include: diabetes, obesity, pregnancy and hypothyroidism. It is also associated with heavy manual work wherein there has been constant and forceful repetitive activities of the hand and wrist and/or work with vibrating tools on a repetitive basis that has a cumulative effect.

Based upon the widely documented and published expertise of the medical community it is safe to state that work related carpal tunnel syndrome is generally the result of repetitive work over an extended period of time.

Rule 1.2.5 Reporting is the governing Rule in dispute and it 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 completed.

* * * * *

All cases of occupational illness must be immediately reported to the proper manager and the prescribed form completed.

Because railroads are required by Federal regulations to report injuries and occupational illness that meet certain medical treatment criteria, employees must report to their manager any medical treatment they receive that was directly related to their injury or illness, including any follow-up visits...."

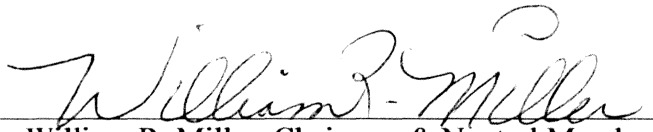
(Underlining Board's emphasis)

Claimant's conversation of December 19, 2012, with his co-workers, asking what does tingling in your hand mean, does not meet the definition of reporting an on-duty injury nor does his subsequent reporting in March of 2013 to Track Supervisor Gilford that he was going to undergo carpal tunnel surgery in April 2013 qualify as promptly reporting an alleged occupational illness as there was no discussion between the Claimant and his employer that the carpal tunnel might have been job related. The record substantiated that the Claimant did not report his carpal tunnel injury having been caused by his work duties until June 4, 2013, when he returned to service. Substantial evidence was adduced at the Investigation that the Claimant violated Rule 1.2.5 as he did not promptly report his alleged injuries to the proper Carrier authorities.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 12 years of service. Review of the Claimant's discipline record further reveals that he was at a Level 3 Discipline Status when Charges arose involving this case, therefore, his subsequent Level 4 Discipline in this instance was in accordance with the Carrier's UPGRADE Discipline Policy. The Board finds and holds the discipline was not excessive, arbitrary or capricious and will not be set aside and the appeal is denied.

AWARD

Appeal denied.



William R. Miller, Chairman & Neutral Member

Award Date: March 14, 2014