

**BEFORE PUBLIC LAW BOARD NO. 6621**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**UNION PACIFIC RAILROAD COMPANY**

**Case No. 27**

**Statement of Claim:** Claim of the System Committee of the Brotherhood that:

1. The discipline (withheld from service and subsequent dismissal) imposed upon Mr. S.R. Croney for alleged violation of Union Pacific Rules 1.6 - Conduct, 1.7 - Altercations and 1.2.5 - Reporting effective April 10, 1994 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Mr. S.R. Croney shall now "... be reinstated to service of the Carrier to his former position with seniority and all other rights restored unimpaired, compensated for all wage and benefit loss suffered by him, including but not limited to, medical and/or insurance premium costs for the claimant and his family beginning on the date the Claimant was removed from service and continuing, and the alleged charge(s) be expunged from his personal record."

**Background:**

S.R. Croney, a Laborer-Operator with two years' seniority, had a running verbal dispute with co-worker K.L. Dock on Thursday, April 27, 2000 as they were working on a track project. Claimant repeatedly had admonished Dock for allegedly incorrectly and unsafely utilizing a track jack to lift the track, and had advised Track Supervisor Gonzales of the unsafe condition. For his part, Dock on several occasions had told Claimant that he would "rat" him "out." Supervisor Gonzales heard Claimant and Dock bickering back and forth, and, when he asked Dock if there would be a problem if they continued to work together, Dock replied in the negative.

At one point, as Claimant appeared to be helping Dock as he was placing the jack by the track, Claimant pushed Dock. In response, Dock pushed Claimant, who fell down. Supervisor Gonzales observed the pushing, and asked Claimant if he was hurt. Claimant said that he was not, but was permitted to leave work for the day because he was upset. Later that afternoon, Claimant sought medical attention for his shoulder. Claimant testified that on Friday, April 28, and on Saturday, April 29, 2000, he left voicemail messages for his supervisor, R. Pettit, who was on vacation, stating that he would be absent those days due to a shoulder injury, and that he had seen a doctor. Pettit denied that the messages mentioned that he had injured his shoulder or had seen a doctor. The following Monday, May 1, Claimant completed a written report of his shoulder injury. By letter dated May 2, 2000, Claimant was removed from service pending the Carrier's investigation of the matter.

Following a hearing held on May 16, 2000, by letter dated June 13, 2000, the Carrier dismissed Claimant for violating Rules 1.6 - Conduct, 1.7 - Altercations, and 1.2.5 - Reporting effective April 10, 1994, which provide in pertinent part:

Rule 1.6 Conduct

Employees must not be:

\* \* \* \* \*

6. Quarrelsome

or

7. Discourteous

Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the Company or its employees is sufficient cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be condoned.

Rule 1.7 Altercations

Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property.

**Rule 1.2.5 Reporting**

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.

\* \* \* \* \*

If an employee is injured on-duty he must report to his manager any follow-up visits to any doctor or other medical care provider resulting from the injury. Specifically, the injured employee must report all:

- Physical therapy or chiropractic treatments
- Prescriptions issued
- Work restrictions
- Medical treatments.

**Carrier's Position:**

The Carrier asserts that several witnesses established that Claimant was the aggressor in the altercation on April 27, 2000, and that its decision to discredit Claimant's self-serving denials should not be overruled by this Board, sitting as an appellate panel. In addition, the Carrier claims that it properly credited supervisor Pettit's testimony that Claimant did not report his shoulder injury to him until May 1. Furthermore, the Carrier, citing arbitral precedent, argues that the seriousness of Claimant's offenses fully supports its decision to terminate Claimant's employment.

**Organization's Position:**

The Organization claims that Claimant did not know that he had a reportable injury until after he had returned home on the afternoon of April 27, and that he promptly reported the injury in voicemail messages to Supervisor Pettit the following two mornings. Moreover, Claimant promptly submitted a written report of the injury on May 1, his next day of work. The

Organization also emphasizes that the injury was known to Supervisor Gonzales, who admittedly observed the altercation that resulted in Claimant's injury and who failed to ask Claimant to complete an injury report. Furthermore, the Organization urges that dismissal is too severe a penalty for Claimant's participation in the altercation, and that progressive discipline should be required. Citing arbitral precedent, the Organization argues that discipline should be rehabilitative, not punitive.

**Findings:**

Rule 1.6, Conduct, and Rule 1.7, Altercations, prohibit employees from being quarrelsome and from entering into altercations with one another. Claimant and K.L. Dock, as acknowledged by Supervisor Gonzales, were openly bickering for a considerable period of time before the shoving match took place, resulting in Claimant's shoulder injury. Claimant did wrong by engaging in the prolonged bickering and by shoving Dock. The bickering probably never would have resulted in a shoving match, however, if Supervisor Gonzales had not failed to intervene and to warn the employees to cease their hostilities. Gonzales was concerned enough about the bickering to ask Dock if the two would be able to continue to work together. Even as the bickering escalated, however, Gonzales made no effort to defuse the situation, such as warning the two employees to stop.

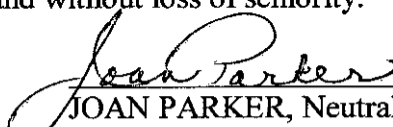
Rule 1.2.5, Reporting, requires an employee to "immediately" report to the proper manager a personal injury incurred on the job. It is undisputed that Claimant failed to notify his manager of his injury on April 27, 2000, the date on which he hurt his shoulder and sought medical attention. Therefore, it is unnecessary to resolve the credibility dispute between Claimant and Supervisor Pettit over whether Claimant notified Pettit by voicemail on Friday,

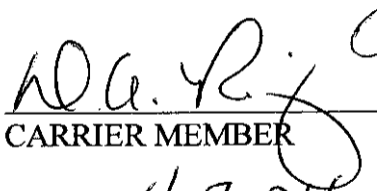
April 28 and Saturday April 29 that he had seen a doctor about his injured shoulder. Because Claimant failed to notify his manager on April 27, he violated Rule 1.2.6.

As discussed above, supervisory inaction contributed substantially to the altercation culminating in the shoving match. Therefore, the Board has concluded that termination was an unduly harsh penalty for the infractions charged and was an abuse of the Carrier's discretion. Because, however, Claimant bears the ultimate responsibility for engaging in the altercation, and because he violated Rule 1.2.5 by failing to report his injury immediately to management, he will not be entitled to any back pay upon his reinstatement.

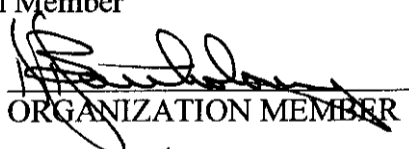
**Award:**

The claim is granted in part. Claimant violated Rules 1.6, 1.7 and 1.2.5, but, for the reasons set forth above, his discipline is reduced to a suspension without back pay. The Carrier shall promptly reinstate Claimant to his former position without back pay, and without loss of seniority.

  
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JOAN PARKER, Neutral Member

  
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CARRIER MEMBER

DATED: 4-7-04

  
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ORGANIZATION MEMBER

DATED: 4-7-04