

PUBLIC LAW BOARD NO. 6719

PARTIES) Union Pacific Railroad Company
TO)
DISPUTE) United Transportation Union

COMPANY FILE: 1386749-D
UTU File No. Jacquinot, K. A.

STATEMENT OF CLAIM:

"Request on behalf of Hostler Helper K. A. Jacquinot, that he be reinstated to service and compensated for all monies lost as a result thereof from time withheld from service until restored to service, i.e., payment for all wage equivalents to which entitled, monetary equivalent of lost productivity shares, health and welfare benefits restored(including monetary loss of any coverage of such while out of service) seniority and vacation rights unimpaired and for attending formal investigation on February 2,2004, for alleged violation of General Rule 1.6 of the GCOR and SSI Item 10-A, 1.6 Conduct, in connection with allegedly being dishonest by misrepresenting facts and circumstances relative to an injury reports on Form 52032 which occurred on January 15, 2004 while working as crew member on the EHH-32-14."

OPINION OF BOARD:

Claimant K.A. Jacquinot was working as hostler helper on Job EHH32-14 on January 14,2994 at Settegast Yard. At approximately 3:20 a.m. the claimant was informed by the hostler that the six engines they were handling were pulling hard and to check that all handbrakes were released. While entering one of the engines through the rear door, the claimant tripped on a hole in the floor and stated he injured his leg. He reported the alleged injury during his shift and finished his tour of duty. He initially declined medical attention but on his drive home decided to see his doctor. His doctor

diagnosed the problem as a strain and recommended rest and prescribed some medication. The claimant was off January 15 through 19 and returned to work on January 20. On January 21, 2004, after completing his tour of duty, the claimant filled out Form 52032, a personal injury report. On the report he described the injury as follows:

"I walked in the back door of the engine, and was talking to MYO Ray Hare on my radio. There was a long panel door hanging open blocking my view of the floor. As I entered the engine, I lifted the panel door and step in, there was no floor panel so I tripped."

On January 23, 2004 the claimant was notified to attend an investigation. In this letter he was notified that the investigation was being held:

"to develop the facts and place your responsibility, if any, in connection with your allegedly being dishonest by misrepresenting the facts and circumstances relative to injury reported on Form 52032, alleged to have occurred on January 15, 2004 at approximately 3:20 a.m., while working as crew member on job EHH 32, at Settegast Yard"

Following the investigation he was notified that he was dismissed for his violation of Rule 1.6 in connection with his being dishonest in misrepresenting the facts and circumstances relative to an injury reported on Form 52032.

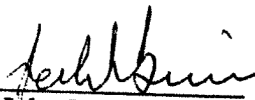
The Carrier argued that the record proved that the claimant was dishonest in reporting his injury. The Carrier pointed to several facts to support its conclusion. First, the claimant refused the Carrier's offer of Medical Attention. Second, the claimant finished his tour of duty and in fact worked overtime without any discomfort. Third, the claimant filled out his accident report six days after the incident denying the Carrier the opportunity to investigate what occurred. Finally, the claimant did not remember the unit

number of the engine where he tripped. The Carrier further stated that the record showed that there were inconsistencies between the claimant's statement and the physical evidence. The Carrier officers stated that this evidence proved that the incident did not occur as the claimant stated. The Carrier concluded that it should not be required to retain employees who are not honest.

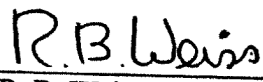
The Organization stated that the Carrier failed in its burden of proof in establishing that Claimant misrepresented the facts. They stated that the Carrier is basing its whole case on whether the claimant remembered whether there was a door on the engine or the position of the engineer's seat or whether there was an engineer's seat. The Organization concluded that the record showed that the claimant injured himself when he was walking and stepped on the floor where a panel was missing.

The Board finds that the evidence in the record does not support the conclusions reached by the Carrier. The record showed that the engine in question had a panel door hanging down blocking the view of the hole in the floor that was partially covered by another panel laying over the hole. This is how the claimant described the incident. Based on these facts, the Board can not conclude that the claimant misrepresented the facts relative to the injury reported on Form 52032 that occurred on January 15, 2004. As the Carrier failed to meet its burden of proof, the claimant should be restored to service and paid for all time lost.

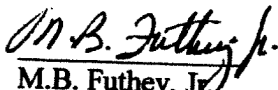
Findings: **Claim sustained.**



John R. Binau
Neutral Member



R. B. Weiss
Carrier Member
01-10-2005



M.B. Futhey, Jr.
Organization Member

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