

PUBLIC LAW BOARD NO. 7194

AWARD NO. 4  
CASE NO. 4

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference  
vs.  
Union Pacific Railroad Company

ARBITRATOR: Janice K. Frankman

DECISION: Dismissal

STATEMENT OF CLAIM AND MOTION:

Request on behalf of M.S. Cabral, for removal of discipline, assessed by Carrier and scheduled for hearing on July 15, 2008, and Motion by Carrier for dismissal with prejudice. (System File 1465488)

FINDINGS:

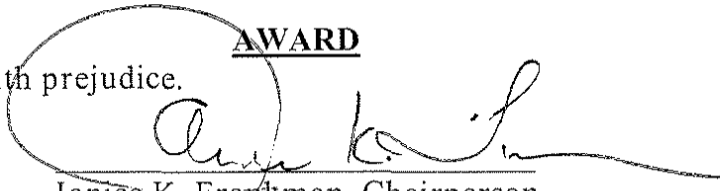
The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute herein; and that the parties were given due notice of the hearing.

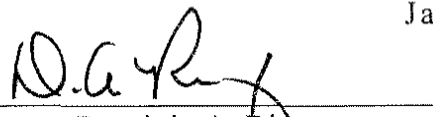
Claimant has executed a Release of All Claims attached as Appendix A hereto, releasing Carrier from all claims and liability arising from his employment including personal injury claims reported on or about February 8, 2006. Claimant has averred waiver of all rights to return to active service including agreement to never seek employment with Carrier.

Prior to hearing of this matter, Carrier moved to dismiss this case as moot. Organization concurred with Carrier's Motion. It is therefore appropriate to grant Carrier's Motion and to dismiss the case with prejudice.

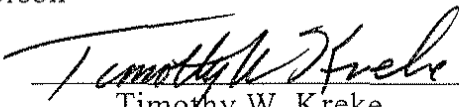
AWARD

Case dismissed with prejudice.

  
Janice K. Frankman, Chairperson  
Neutral Member

  
Dominic A. Ring  
Carrier Member

September 4, 2008

  
Timothy W. Kreke  
Organization Member

Sept 4, 2008

UNION PACIFIC RAILROAD COMPANY  
RELEASE OF ALL CLAIMS

Draft No. 322005

For the [REDACTED], received by me, [REDACTED] of which represents sickness benefits previously received under the terms of the Railroad Unemployment Insurance Act;

I, Manuel S. Cabral, hereby release Union Pacific Railroad Company and all other parties, from all claims and liability of every kind or nature, INCLUDING CLAIMS FOR INJURIES WHICH ARE KNOWN OR UNKNOWN TO ME AT THE PRESENT TIME, which I claim to have arisen out of and been caused by and during the course of my employment with Union Pacific, including claims for personal injuries which I have reported as occurring on or about February 8, 2006 at or near Wells, Nevada resulting in personal injuries which I claim to be permanent in nature.

As a further inducement to the parties with whom I am making this settlement, I, Manuel S. Cabral, release Union Pacific Railroad Company ("Union Pacific") and all other parties from all claims and liability of every kind or nature, including:

1. Any future damages, general or special, that I am reasonably certain to incur in an attempt to alleviate or cure the injury to my shoulder, including surgery; and any increased risk of contracting any physical disorder related to or resultant from the injury to my knees as a result of exposure to any occupational activities and/or occupational environment created or permitted to exist. I acknowledge that all medical expenses incurred by reason of the injuries sustained by me have been paid, or if unpaid, will be processed for consideration and possible payment by Union Pacific subject to the following. It is understood and agreed that in order for payment to be considered and possible made, I, will submit all unpaid medical bills related to my injuries sustained by me during my employment with Union Pacific accompanied by a medical report or record to Union Pacific Railroad Company within ninety (90) days from the date this agreement is signed. It is further understood and agreed this includes any unpaid medical bills which have previously been submitted to Union Pacific. It is agreed that any medical providers covered by a FPO, HMO, or similar contract with or on behalf of Union Pacific Railroad Company that provided services in this case will be governed by those agreements such that medical providers will not recover more than the total

APPENDIX<sup>1</sup> A

MSC

understands and agrees that Union Pacific will not pay more than reasonable and customary fees to Claimant's medical providers. To the extent any medical provider demands payment greater than the reasonable and customary fee, Claimant understands and agrees that he will be solely responsible for the amount greater than the reasonable and customary fee. Bills received more than ninety (90) days after this agreement will not be paid. Union Pacific Railroad Company will not pay any finance charge associated with any charges for medical treatment. I agree that all future medical bills, costs, or expenses of diagnosis, treatment, care, or rehabilitation are my sole responsibility and agree that the amount of such future medical bills, costs, or expenses may be unknown and uncertain, but I assume this obligation nonetheless.

2. Damages of any kind or nature against Union Pacific under the Federal Employers' Liability Act or any other statute, ordinance or rule of law including, without limitation, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866, 1870 and 1871, the Americans With Disabilities Act and any other federal, state or local disability statutes, rules or regulations, and the Railway Labor Act or any labor or personal contract of employment. It is my intent to completely and irrevocably settle by this Release all claims of any kind or nature arising out of my employment with Union Pacific, as well as the claims set forth hereinabove. Physical injury claims within the contemplation of the parties specifically include, but are not limited to, those involving: exposure to and/or injury from toxic chemicals, gases or fumes, electromagnetic radiation, repetitive trauma, micro trauma, carpal tunnel, and hearing loss or injury (tinnitus). This list is intended to be illustrative of the broad range and nature of the types of claims that I am waiving by executing this Release.

I hereby forever waive all rights to return to active service. I agree that I will never seek employment with, and agree that I will not at any time in the future exercise any option to buy out any seniority rights that I may have under any offer made to my craft by Union Pacific or any of its predecessors, successors, affiliated companies or entities in any capacity. I also agree that if I attempt to mark up or attempt to revoke or in any way amend the waiver of all rights to return to active service, any such action on my part will be considered and treated as an immediate resignation.

It is further understood and agreed that I agree to indemnify and hold harmless Union Pacific from any liability arising from any subrogation claim to which my recovery may be subject; liens for any compensation paid under any statute or regulation, state or federal; medical payments due or claimed to be due; any attorney lien asserted by any prior legal representative; or any contract pertaining to the proceeds from the settlement referred to in this Release.

I hereby agree that I will keep the terms of this Release strictly confidential and shall not disclose any of its terms, particularly the amount paid, to any person other than those persons who have a need to know the terms of the Release for the purpose of managing my financial affairs or preparation of tax returns. Further, I agree that I shall instruct my agents or representatives not to disclose the terms of this Release to any third parties other than those persons who have the need to know for the purpose of managing my financial affairs or in preparation of tax returns. As used herein, agents or representatives of include my accountants, attorneys of record, my attorney's law firm, and the staff of my attorney's law firm.

I specifically agree that neither I nor my agents nor representatives shall disclose directly or indirectly to newspapers, television stations, radio networks or any other affiliation of the news media the terms, conditions or amounts described in this Release.

Breach of this condition will be considered a breach of the entire Release agreement.

In making this Release I acknowledge that I rely wholly upon my own judgment, belief, and knowledge of the nature and extent of my injuries, including the permanency of such injuries; the possibility of a natural progression of such injuries; the possibility that such injuries may become permanently disabling in the future; the possibility that such injuries may require future medical treatment in an attempt to alleviate or cure such injuries, including surgery; and that the possible future effects of my existing injuries are specifically bargained for herein, included, and released in exchange for the payment of consideration stated hereinabove.

In executing this Release it is further understood and agreed that I am relying wholly upon my own judgment, belief, and knowledge, together with that of my attorneys and medical care providers, of the nature, extent, and duration of the damages and that I have not been influenced to any extent whatever in making this Release by any representation or statements regarding my damages, or regarding any other matters, made by Union Pacific or its representatives. I further understand and agree that any and all medical, rehabilitation, and/or other costs or expenses incurred by me from and after the date of execution of this Release will not be the responsibility of Union Pacific.

I understand that this release covers all future consequences of my accident and injuries and of all medical treatment I may hereafter receive. I intend that this release shall forever discharge Union Pacific Railroad Company from any further liability or responsibility for this accident.

The above payment is made and accepted in settlement of my claims, and is not an admission of fault or liability.

The payment of the above sum is the only consideration for this release. No other promises have been made to me in connection with this settlement.

I HAVE READ THE ABOVE, AND UNDERSTAND IT IS A FULL RELEASE OF ALL MY CLAIMS.

~~I HAVE READ THE ABOVE AND UNDERSTAND IT A FULL RELEASE OF~~  
Signed at Salt Lake City, UT this 18 day of September 2000. <sup>ALL MY CLAIMS</sup>

Manuel S. Cabral  
Manuel S. Cabral

Witnesses:

Lee Bellaluna  
J. Burk