

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

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

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY)**

Case No. 288

Award No. 262

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Level 2 discipline [one (1) day alternative assignment with pay to develop a Corrective Action Plan to modify behavior] imposed upon Welder James K. Popp for failing to report a personal injury sustained to his right shoulder on February 26, 2007 is unjust, unwarranted, based on unproven charges and in violation of the Agreement (System File B-0719C-101/1478081 CNW).
2. As a consequence of Part 1 above, Welder Popp must have his record cleared of the alleged offense and must be compensated at his applicable rate for any lost time as a result of the discipline assessed, Mr. Popp must also be compensated for any personal mileage incurred in connection with attending the hearing of May 21, 2007 or subsequent thereto to meet the discipline assessed."

FINDINGS:

By notice dated March 16, 2007, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with allegations that the Claimant allegedly had failed to report a personal injury that he had sustained while on duty on February 26, 2007. The investigation was conducted, as scheduled, on March 21, 2007. By letter dated March 28, 2007, the Claimant was notified that as a result of the hearing, he had been found guilty as charged, and that Level 2 discipline was being imposed. The Organization thereafter filed a claim

on the Claimant's behalf, challenging the Carrier's decision to discipline the Claimant. The Carrier denied the claim.

The Carrier initially contends that it prevented substantial evidence proving that the Claimant was in violation of Rule 1.2.5 by failing to report that he had sustained an injury. The Carrier asserts that the record convincingly shows that the Claimant did not report the personal injury to his manager until fourteen days after it allegedly occurred. The Carrier argues that the Claimant's actions constitute a violation of Rule 1.2.5, and the discipline therefore was justified.

The Carrier then addresses the Organization's position that the Carrier committed a procedural violation by failing to provide the General Chairman with a copy of the transcript and the exhibits. The Carrier maintains this argument is no more than a red herring. The Carrier points out that the Vice Chairman who handled the claim and the appeal was provided with these documents in a timely manner. Moreover, the Carrier provided these documents to another Vice Chairman who previously had been General Chairman of the CNW Federation until it merged with the Union Pacific Federation. The Carrier contends that when it learned of this, it immediately arranged for the General Chairman to receive the documents and offered him additional time for any appeal if he needed it. The Carrier points out that it did not receive any response to this offer. The Carrier insists that this was no more than a clerical oversight.

The Carrier argues that it did not commit any procedural violations egregious enough to warrant the overturning of the discipline. The Carrier additionally asserts that it did not commit any violations that would unduly prejudice the Claimant. The Carrier

contends that it has ensured that the Claimant receive all of the rights granted under the hearing; the Claimant had a hearing even though he did not pick up the initial Notice. The Carrier emphasizes that it did not commit any procedural errors during the handling of this claim, so the assessment of discipline should not be disturbed.

The Carrier then argues that it is well established that the role of an arbitral panel is to verify whether substantial evidence supports a finding of guilt. Once an arbitral panel has determined that the Carrier has presented substantial evidence at the hearing, the panel lacks authority to overturn the discipline imposed. The Carrier asserts that even if it seems harsh, discipline cannot be overturned unless it is found to be arbitrary, capricious, or an abuse of Carrier discretion.

The Carrier insists that it has met its burden of proof in this matter, and it was duly lenient in assessing a day of pay to develop a corrective action plan. The Carrier points out that this is no more than a formal reprimand, and this discipline should be left intact. The Carrier emphasizes that the discipline imposed in this case is not excessive, harsh, or arbitrary, and the instant claim should be denied.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that it is clear that the Carrier imposed discipline because it believed that the Claimant did not promptly report his injury. The Organization asserts that the Carrier has failed to meet its burden of proving that the Claimant failed to timely report his injury.

Pointing to prior Board Awards, the Organization argues that injuries do not

necessarily manifest themselves immediately. Moreover, the record includes testimony that the Claimant mentioned his sore shoulder to a co-worker on February 16, 2007, but never registered another complaint about it until March 12, 2007. The Organization maintains that the Claimant clearly attributed the aches that he experienced on February 26 to be nothing more than muscle strain associated with the work he completed. The Organization submits that the Claimant did not realize that the situation could involve more than that until he experienced the recurrence on March 12, 2007, which he immediately reported to his supervisor.

The Organization asserts that under these circumstances, there can be no doubt that the Claimant did not violate Rule 1.2.5. The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. We find that the Organization was provided with the transcript and exhibits in compliance with the rule.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant was guilty of violating Carrier rules by failing to report a personal injury. The record reveals that the Claimant did feel some soreness in his shoulder on February 26, 2007, but did not attribute it to anything more than muscle strain because of his hard work removing snow from switches. The Claimant felt better the next day; and it was not until March 12, 2007, that

he felt some pain again when he was getting into a truck. The Claimant then later stated that he first felt the muscle strain on February 26, 2007.

This Board recognizes that there is a very serious rule involving the prompt reporting of injuries. However, there are cases where employees do not recognize a slight pain to be an injury until some time later. This is one of those cases.

In discipline cases, the Carrier has a burden of proof to meet that the Claimant acted in violation of a rule. In this case, this Board finds that the Carrier has failed to meet that burden and, therefore, this claim must be sustained.

AWARD:

The claim is sustained.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: Sept 9, 2009


CARRIER MEMBER

DATED: Sept 9, 2009