

SPECIAL BOARD OF ADJUSTMENT NO. 1127

**AWARD NO. 13
CASE NO. 13**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company
(Former Southern Pacific Transportation Company-Western Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: November 12, 2002

DESCRIPTION OF CLAIM:

Claimant Jeffrey W. Brown was discharged for violating rules relating to alertness, injury reporting, and dishonesty. At the time of his dismissal, he had just over four years in Carrier's service. He had no prior disciplinary history of significance.

The Claim in this dispute seeks to overturn the discipline and make Claimant whole for all losses.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on 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, and that the parties were given due notice of the hearing.

The Board's review of the hearing transcript reveals no procedural shortcomings of significance.

On the merits, while recognizing that reasonable minds may differ markedly over the evaluation of the same evidence, the Board finds that the evidence of record may permissibly be construed to constitute substantial evidence in support of the majority of the hearing officer's findings. Regarding the injury reporting violations, it is clear that Claimant had no problems with his left wrist at anytime prior to October 23, 2001. On that work day, however, he testified that pain and discomfort caused him to take both aspirin and Ibuprofen during the afternoon. Despite this, Claimant did not report those circumstances to his foreman or his supervisor. It was not until after an off-duty period of some eight hours that he notified the Carrier of allegedly excruciating pain in his wrist.

Substantial evidence also permits the hearing officer's finding that Claimant violated the dishonesty portion of rule 1.6 by claiming a repetitive stress injury to his left wrist. Prior to October 23, 2001, by his own testimony, Claimant had operated the rail lifter continuously for nearly three months without any wrist problems whatsoever. October 23rd was also Claimant's first day back to work after seven consecutive rest days. Despite saying nothing to his foreman or supervisor

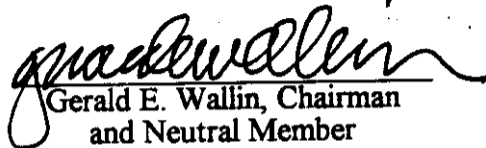
about wrist problems that day, he claims to have experienced such intense pain by 4:00 a.m. the next morning that it brought tears to his eyes. When asked a few hours later if the problem was work related, Claimant informed his supervisor that he did not know and suggested he may have slept on it wrong. By the next day, October 25th, he claimed it was work related and occurred on the 23rd right after lunch. After being informed by a Carrier official that such timing was impossible because the gang did not acquire the track until after noon and the rail lifter did not begin to operate until after 3:00 p.m., Claimant changed his account to contend that "lunch" meant after 3:00 p.m. and asserted that the injury occurred after 4:00 p.m.

The evidence also presented several points of conflicting testimony such as whether Claimant initially raised the possibility of carpal tunnel syndrome, whether Claimant had asked Carrier officials to take him to the doctor, and whether Claimant had ever asked to be taken off the rail lifter. It was within the province of the hearing officer to assess the credibility of this testimony and resolve the credibility issue against the Claimant.

Notwithstanding the foregoing, the Board does not find a violation of Rule 1.1.2 to be supported by the record. Indeed, on this record, such a violation is arguably inconsistent with the finding of false injury.

Given the nature of the dishonesty finding permitted by the record, the Board does not find any proper basis for disturbing the Carrier's disciplinary action.

AWARD: The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member