

PUBLIC LAW BOARD NO. 6155

Case No. 2
Carrier File No. 9204075
Organization File No. 10152A
NMB Code 106
Award No. 2
Claimant: Engineer K. W. Sibley

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

The Organization appeals the 31-day suspension issued to Engineer K. W. Sibley and requests the discipline issued be expunged from the Claimant's personal record and the Claimant be paid for all time lost with seniority and vacation rights restored unimpaired.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 29, 1998, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

By certified letter dated June 18, 1992, the Claimant was advised to attend a formal investigation to determine whether he had violated Carrier rules, when he allegedly failed to report a personal injury in a timely manner. The hearing, originally scheduled to be held on Monday, June 22, 1992, at the Office of Manager of Train Operations, was postponed and actually held on June 30, 1992. The Rule allegedly violated reads in part:

Rule 801

. . . all cases of personal injury while on duty or on Company property must be promptly reported to proper officers on the prescribed form.

According to the Claimant, he was injured at approximately 5:00 a.m. on June 9, 1992, at Apex, Nevada, while he was

performing services as an Engineer on the HKYR-06. The Claimant went on duty at 5:00 p.m. at Milford the day before. The Claimant filed an injury report eight days later on June 17, 1992. According to the report filed, the Claimant was injured while operating the hand brake on Unit 3909. He reported that when he was operating the engine he remembered that he "stripped a gear or something" which resulted in the injury. He indicated he felt that the right side of his neck and the upper shoulder were affected. At no time prior to filing this report did the Claimant report a possible injury to any Company official. He testified that he wasn't aware of an injury until he awoke on the morning of June 17, 1992.

Following a review of the hearing transcript, the Carrier suspended the Claimant for a period of 31 days.

ORGANIZATION'S POSITION

It is the Organization's position that the Claimant reported the incident as soon as he became aware that he was injured. They contend that since it wasn't until June 15, 1992, that the Claimant felt any kind of discomfort, he could not have reported it before that time. As soon as he realized the need, he went to see the doctor. They argue that it was only while being questioned by the doctor that the Claimant remembered the experience he had with the hand brake on June 9, 1992 and associated that with the injury. The Organization points out that it was the doctor who advised the Claimant to file an injury report.

The Organization asserts that the Claimant is a good employee. They contend he did not believe he was late in reporting his injury since he did not believe he was injured until the pain surfaced.

CARRIER'S POSITION

The Carrier argues that there are two reasons an employee must report an injury promptly. The first and foremost, they say, is to assure that the injured person gets medical attention at the earliest possible time. The second is to assure that if there is faulty or malfunctioning equipment, it is repaired before others are injured. If there had been something wrong with the hand brake on the HKYR-06, the Claimant's failure to promptly report his injury and/or the equipment problem, could have caused others to be injured. As it was, the Carrier asserts, the Unit was subsequently inspected and found to be sound.

The Carrier insists the Claimant should have known the meaning of Rule 806 and should have reported the possible injury.

or at least the mechanical problem he had with the hand brake on June 9, 1992.

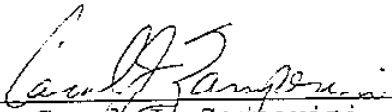
DECISION

The Claimant erred in not reporting the mechanical problem, as well as, the possible injury on June 9, 1992. His failure to do so for 8 days, prohibits his claim that the incident with the hand brake caused his condition. This is especially true in light of his doctor's diagnosis that he suffers from degenerative disc problems which conceivably could have been aggravated by the hand brake incident, but, probably not the immediate cause of the injury. It is also unlikely that if the aggravation occurred, the symptoms would be delayed for a week.

While the Board finds the Claimant culpable in this instance, we also note that he was a good employee since being reinstated in 1987. In the five years between his reinstatement and this incident, he has only been issued one Letter of Warning because of tardiness. A 31-day suspension is excessive.

AWARD

The 31-day suspension is to be reduced to a 10-day suspension. The Claimant is to be reimbursed the difference in lost wages and lost benefits between the 31-day suspension and the 10-day suspension.



Carol J. Zamperini
Chairman and Neutral Member

This 30th day of September, 1998.
Denver, Colorado