

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of Level 2 discipline from the record of engineer R. G. Ayers with him being made whole, which includes but not limited to lost earnings, all vacation rights, cobra payments and any other penalties associated with this discipline."

FINDINGS:

On May 13, 2004, while working on LV043, Engineer R. G. Ayers slipped and fell backwards while climbing the stairs to the engine compartment. Engineer Ayers managed to avoid falling back down the stairs by catching the handrail. As he grabbed the handrail, he felt a pain in his shoulder. The pain subsided and Engineer Ayers completed his tour of duty without completing an accident report.

According to Engineer Ayers, the incident was due to wet floor resulting from pouring rain and leak in engine compartment.

On May 15, 2004, while putting away groceries in his pantry, Engineer Ayers experienced pain in his shoulder similar to what he felt as he grabbed the handrail in the locomotive engine. On May 16, 2004, the following morning, the soreness in his shoulder had become more acute. At that point, he contacted Carrier officer, MTO Duckett, to report the accident.

On May 17, 2004, Carrier officers MTO Duckett, MOP Miller, and MTM Johnson, questioned Engineer Ayers about the nature of accident of May 13, 2004 - inquiring as to why he failed to file a personal injury report prior to ending his tour of duty on May 13, 2004, and why he failed to report defective engine.

On May 21, 2004, Engineer Ayers received a letter from Carrier directing him to *"Report to the Union Pacific Railroad Yard Office, 901 North 4th Street, Chickasha, Oklahoma at 0900, Monday, May 31, 2004 for a formal investigation to develop the facts and determine your individual responsibility, if any, in connection with your alleged dishonesty/misrepresentation in reporting an injury to yourself that you claim occurred while working as Engineer on LV043-13 on locomotive UP2042 at approximately 1230*

hrs on May 13, 2004, on the Enid/Lawton subdivision. Also, you are being charged with allegedly late reporting of a personal injury that was claimed on May 13, 2004 and not turned in until May 16, 2004. In addition, you were allegedly careless of safety of others by failing to report engine defects electronically upon tie-up on May 13, 2004. This report indicates a possible violation of Union Pacific General Code of Operating Rules effective April 2, 2000, and Air Brake and Train Handling Rules April 1, 2004.

After mutually agreed upon postponement, formal investigation was held on October 6, 2004. After reviewing the transcript, Carrier found Engineer Ayers responsible for violating GCOR 1.2.5 – Reporting. Upon a finding of responsibility, Engineer Ayers was assessed Level 2 discipline.

Discipline was appealed and denied in accordance with agreement. Partisan parties were unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier took the position that Engineer Ayers failed to comply with rule when he waited until May 16, 2004 to report an accident that occurred on May 13, 2004. It was Carrier's contention that Engineer Ayers had, also, endangered other employees when he failed to report the engine as defective.

Organization argued it is unreasonable and impractical for employees to complete an accident report for every minor bump or bruise, and that such a practice would, likely, result in discipline or permanent dismissal for being accident prone; it felt strongly that. Engineer Ayers made timely reporting of accident since he made the report as soon as he was sure it was sufficiently serious to warrant reporting. Organization submitted medical documentation to support its argument that many injuries are not, immediately, manifest and do not become obvious or painful until several hours or, in some cases, days later.

In responding to Carrier's allegation that Engineer Ayers had placed at risk the safety of others in failing to bad order an engine believed to be defective, Organization argued that Engineer Ayers had been instructed by MYO Duckett to advise him, first, before bad ordering a locomotive so that he could determine if, in fact, the locomotive should be taken out of service.

Organization complained, too, that no other employee with knowledge of the leaky engine was formally charged. It made the additional point that after Carrier officers were advised of leaky locomotive, it was kept in service and placed in a South bound train without reporting its defective condition.

OPINION OF THE BOARD:

Upon careful consideration of the entire record, and the positions taken by both parties, we are persuaded by the arguments presented by Organization. It is generally accepted that many injuries are not immediately apparent. Based on evidence of record, to include statement from Engineer Ayers' physician, we believe he reported his personal injury as soon as it was apparent. And, we saw nothing in the record to suggest dishonesty or misrepresentation in reporting the injury.

Regarding the allegation that Engineer Ayers placed, at risk, the safety of other employees in failing to report the leaky engine, we don't believe Carrier had much faith in that charge since it did not bring similar charges against other crew members; and Carrier left that engine in service after having been made aware of its condition.

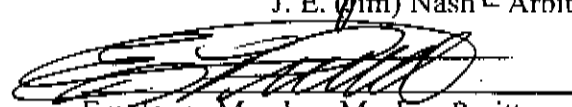
Given the facts and circumstances of this dispute, we believe assessment of discipline was both unfair and unreasonable. We have no alternative but to set it aside.

AWARD:

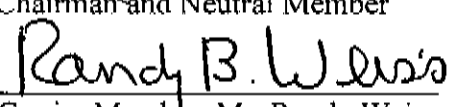
Claim is sustained per findings above. Carrier is directed to implement this award within 30 days of execution by majority Board.



J. E. (Jim) Nash - Arbitrator, Chairman and Neutral Member



Employee Member, Mr. Lee Pruitt
Brotherhood of Locomotive Engineers &
Trainmen



Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company

May 16, 2005