

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 25098
Docket No. 44765
00-1-98-1-U-2048**

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company (former Chicago and
(Northwestern Transportation Company)

STATEMENT OF CLAIM:

“The Brotherhood of Locomotive Engineers UP (CNW) requests the Division consider and authorize claim in behalf of Engineer R.E. Staggs, SS# 357-34-7831, Union Pacific Railroad former Chicago and Northwestern Transportation Company, for compensation for all lost time including time spent at the investigation and that this incident be removed from claimant's personal record when he was investigated on November 4, 1997 on the following charge:

‘failure to report an off duty injury that may have affected your job performance, when you reported for duty on August 22, 1997 and August 23, 1997, in violation of Rule 1.2.5 of the GCOR.’”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was assessed a Level 2 (Upgraded to Level 4) discipline by the Carrier as result of an Investigation held on November 4, 1997. Carrier found that Claimant had violated Rule 1.2.5 by not reporting an off duty injury.

The record before this Board shows the Claimant was working between Proviso Yard, Maywood, Illinois, and Clinton, Iowa. On August 22, 1997 during the westbound trip Claimant complained of back pain. He also testified the pain continued while at Clinton. On August 23, 1997 during the return trip to Proviso Yard Claimant continued to complain of back pain. After arrival at Proviso Yard, Claimant reported he hurt his back while setting the hand brakes on the locomotives.

Carrier charged the Claimant with failure to report an off duty accident. The record is void of any evidence that Claimant suffered an off duty injury. The record does show that Claimant had been suffering from back pains for 2-3 years prior to the incident. As a result of a complete physical examination after the August 23 incident the Claimant appears to suffer from osteoporosis and osteoarthritis.

The Carrier has the burden to prove that the Claimant violated the rule as charged. While Claimant may have violated some rule for not reporting his chronic back pain, the record is clear that Claimant did not fail to report an off duty injury. The Carrier has failed to meet its burden.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 28th day of February, 2000.