

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Railroad Company violated the controlling agreement when they unjustly dismissed temporary Carman R. E. Coles from service on June 7, 1978 as a result of investigation held on May 22, 1978.
2. That accordingly, the Carrier be ordered to reinstate to service, R. E. Coles, with seniority and vacation rights unimpaired, be compensated for all time lost, plus 6% interest and be reimbursed for all losses sustained account of loss of coverage under Health and Welfare and Life Insurance agreements.

Findings:

The Second 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 waived right of appearance at hearing thereon.

On April 22, 1978, Claimant injured his back while on duty. As a result of the incident, the Carrier convened an investigation to determine Claimant's responsibility for: 1) suffering a personal injury; 2) failing to properly report an on-duty injury; and, 3) working for another employer during the period Claimant was unable to protect his regular assignment as a Temporary Carman.

The investigation was held pursuant to notice on May 22, 1978. The Organization contended that the notice of charges dated May 17, 1978 was vague and imprecise. We must overrule the Organization's objection. The notice sufficiently described the infractions which Claimant allegedly committed. The record reveals that Claimant's representative presented a vigorous and able, albeit unsuccessful, defense on Claimant's behalf.

At the investigation, Claimant testified that the back injury occurred when he was stooping low to bleed cars on track two in the Blue Island Yard. Claimant stated that it was difficult and hazardous to perform his assignment because the tracks next to track two were all torn, the terrain was rocky, and the area strewn with debris. Though Claimant submitted a statement from two fellow carmen to support his contention that he told his supervisor he suffered a back injury, the General Foreman testified that Claimant never reported the injury to his immediate supervisor. The General Foreman did not learn that Claimant had incurred an on-duty injury until Claimant sought to return to service on May 8, 1978. There were similar conflicts among the witnesses at the investigation regarding whether or not Claimant worked at the Field Museum of Natural History after he was injured. Under Rule 21(f) of the applicable Agreement, Claimant was required to obtain the appropriate consents before engaging in other employment during the period he was unable to work for the Carrier. Claimant, however, denied that he worked at the Field Museum after he sustained the injury.

The Organization argues that the Carrier shares some responsibility for Claimant's personal injury. According to the Organization, the Carrier failed to alert Claimant to the potential hazards even though it was aware that the adjacent track was in poor condition. The Organization further asserts that Claimant not only timely reported his injury but also did not violate Rule 21(f). Alternatively, the Organization argues that even if Claimant was responsible for his injury, dismissal was an arbitrary, capricious and excessive penalty. The Carrier contends that Claimant's carelessness was the sole cause of his injury. Though the Carrier concedes there are several conflicts in the investigation testimony, it argues that it properly resolved those conflicts against Claimant. Pointing out that Claimant had suffered two prior work related injuries in less than two years of service, the Carrier concludes Claimant is accident prone.

It is not the function of this Board to resolve disputes arising from conflicts in testimony given by witnesses at the investigation. These credibility determinations are best left to the hearing officer. In this case, the Carrier could reasonably decide to attach more weight to the General Foreman's testimony as opposed to Claimant's self-serving declarations. Therefore, the record contains sufficient evidence to demonstrate that Claimant failed to promptly report that his back pains were the result of injury which occurred while he was bleeding the train on April 22, 1978. Lastly, the Carrier could rely on the information it received from the museum to show Claimant worked at the museum after his injury. Thus, Claimant violated Rule 21(f).

Though Claimant suffered two prior on-duty injuries, we rule that dismissal was excessive and unduly harsh in this case. Both the Carrier and Claimant are responsible for providing a safe work area. Claimant's carelessness contributed to his injury in this case, but the record contains no evidence to substantiate the Carrier's position that Claimant was totally to blame for his prior injuries. Thus, we will reinstate Claimant to service with his seniority unimpaired but without back pay. We hope the time Claimant has spent out of service will impress upon him that he has a duty to perform his assignments with due care and to minimize avoidable personal injuries.

A W A R D

Claim sustained in accordance with the Findings.

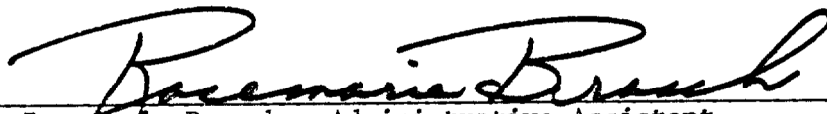
Form 1
Page 3

Award No. 9443
Docket No. 9084
2-IHB-CM-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1983.

