

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(The Washington Terminal Company

Dispute: Claim of Employees:

- 1- That under the current agreement, Car Cleaner, David M. Barletta, was unjustly dealt with when he was dismissed from the service of The Washington Terminal Company effective September 3, 1975.
- 2- That accordingly The Washington Terminal Company be ordered to return Car Cleaner, David M. Barletta, to the service of the Carrier with seniority and vacation rights unimpaired and compensate him for all time lost since September 3, 1975.

Findings:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe 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.

The Claimant, Car Cleaner David M. Barletta, was employed by the Carrier on September 2, 1974. On November 15, 1974, he cut his middle finger on a Metroliner door; this was a lost time accident of 8 days. On January 18, 1975, he bumped his head on a platform; this was a lost time accident of 3 days. On February 2, 1975, he was involved in an accident with a moving locomotive; this was a lost time accident of 156 days. On July 19, 1975, while vacuuming a coach he hurt his back; this was a lost time incident of 24 days. On August 19, 1975, the Claimant was ordered to appear for a hearing based on the charge that negligent responsibility on his part caused the four personal injuries to the Claimant. A hearing was held on Wednesday, August 27, 1975. The Claimant was found guilty as charged on September 3, 1975, and dismissed from the employment of the Carrier.

The Organization contends that the Hearing Officer prejudged the case. The Organization contends: that negligent responsibility was not shown on item no. 1; that the Carrier created the unsafe condition in item no. 2; that item no. 3 is now in litigation and that there is no conclusive evidence on this point; and that as to item no. 4 the Claimant's back problem was connected to injury number 3 and not an injury at all.

The Carrier contends the hearing was fairly and properly conducted and that the evidence presented against the Claimant did substantiate the charges.

We find that the statement of Mr. Woods, the Hearing Officer, found on page 7 of the transcript, that "... we don't need such information to prove our case" was improper. Mr. Hoover, the General Chairman, said it very well when he stated: "You are supposed to be as much devoted to this man's side as you are to the Company's side". We find from the entirety of the record that this remark was not prejudicial to the outcome of Claimant's case. The Claimant was very ably represented by both the General Chairman and his Committeeman. The Claimant and his representatives were given every opportunity to question the Carrier's witnesses at the hearing. They had full opportunity to present the Claimant's position as they saw fit.

We find that substantial evidence in this record establishes that the Claimant was guilty as charged. Concerning item no. 1, Mr. McPherson, the Assistant Master Mechanic and the Claimant's Supervisor, testified that if the door had been properly operated, the Claimant would not have cut his finger; and the evidence shows that he had been instructed in the proper manner for operating the door (Employes' Exhibit "C"). As to charge no. 2, the Claimant was clearly negligently responsible for bumping his head on the platform. On charge no. 3 Mr. McPherson testified that he personally investigated the event. He testified that the Claimant told him that he did get off the Coach he was in to urinate, and, when he did, the electric motor struck him (Tr-11). While Mr. Barletta chose not to testify because this matter was pending in litigation and his attorney was not present, he did so at his peril (Tr-21 and 22). We have read his statement to the General Claim Agent (Carrier's Exhibit "J"), and find only that there is substantial evidence in the record to support the finding of negligent responsibility for this injury, which resulted in the loss of 156 days. Concerning Event No. 4, the record shows that the Claimant did report a back injury on July 19, 1975, while vacuuming a coach and as a result did not report back to work for 24 days. The Claimant did not state to anyone on July 19, when his back started to hurt him while vacuuming, that it was a recurrence of the February 2, 1975, injury (Tr-19). It is not unreasonable for the Carrier to expect an employee to be able to vacuum a coach without injury to his back to such a degree as to lose 24 days work, and at least an element of lack of due care, in the extremely narrow context of this record, can be considered to be present in this case, especially where there is no showing of lack of safe tools or safe working conditions.

From the entire record before us, we find that the dismissal of the Claimant from the service of the Carrier was not arbitrary, capricious or excessive. We shall deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of April, 1977.