Award No. 6306
Docket No. 6183
2-LT-USWA-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA, A. F. of L. - C. I. O.

THE LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

Employe Denver Rice was discharged by the Carrier effective March 31, 1971. The stated reason for the discharge was that Mr. Rice was accident prone. It is the position of the Union that Mr. Rice was improperly discharged and that, moreover, he was denied a full and fair hearing. As a result, the Union seeks reinstatement with full back pay.

EMPLOYES' STATEMENT OF FACTS: Denver Rice's continuous service dates from November 15, 1955. He had been previously employed by the Carrier but his continuous service for that previous period was broken. Mr. Rice's safety record during his entire employment with the Carrier includes 38 accidents. One of these accidents occurred in his previous employment period prior to November 15, 1955. Mr. Rice has worked for the Carrier in both the car shop and the maintenance of way area. Some of the accidents occurred while Mr. Rice was in the maintenance of way area and some occurred while he was working in the car shop area. Of the total of 38 accidents, approximately 19 are "eye wash" accidents which consisted essentially of foreign objects in the eye which is a common occurrence of all employes and frequently results from dust or other foreign particles entering the eye. Of the remaining number of accidents, the Union claims that, at most, 3 or 4 could in any way be considered as resulting from any fault of his. (The Carrier's "safety expert" testified that a greater number could be considered Rice's fault, but this testimony is based not on an investigation of the accidents themselves, but on an examination of safety reports filed by foremen. Mr. Rice was not furnished with copies of these safety reports until his discharge hearing and he contests the conclusions of the foremen involved).

While the Union sought in the hearings to establish that fault could be assessed against Mr. Rice in only a few cases, the Carrier consistently took the position that they were not concerned with fault in the various accidents, but rather relied entirely upon the number of accidents in comparison with other employes as an indication that Mr. Rice was accident prone.

POSITION OF EMPLOYES: It is the position of the Union that the analysis may be the Carrier of Mr. Rice's record in comparison with other

In any event, as stated above, the investigation in the instant case was for the sole purpose of determining whether or not the claimant was guilty by being accident-prone as charged. Based on statistics (Exhibit "G" appended to the transcript), which incidentally was compiled in accordance with the formula required for I.C.C. reporting for the purpose of eliminating any possibility of personality conflict, there can be no question as to the claimant's guilt in the instant case. Based on the man hours worked, these statistics indicate that claimant suffered nineteen (19) injuries, not including eye cleansing cases, over a period from 1957 through 1970 with a frequency rate of 83.3 and an average of 1,200 hours worked between injuries. The average for 49 employes in this department reflects 13,548 man hours worked, 3.9 accidents, with a frequency of 28.7 and 5,036 hours between accidents. The foregoing is indicative of the fact that claimant suffered approximately five (5) times as many accidents with a frequency rate over two (2) times the average and approximately four (4) times less than the average number of hours worked between accidents. In view of these statistics which neither the claimant nor the Organization have contested, surely there can be no question as to whether or not claimant Denver Rice is in fact accident-prone.

In addition to the above, as previously stated, neither the claimant nor his designated representatives have taken exception to the fact that the claimant was charged with being accident-prone and, as a result of the investigation, was found guilty as charged. In fact, the claimant admitted his guilt to the charge by his personal request for reinstatement on a leniency basis as verified in memorandums dated April 2, 1971 and April 23, 1971.

Insofar as the severity of the discipline rendered, it should be noted that contrary to several warnings, written and otherwise, as indicated in the transcript of the investigation, the claimant by his own actions failed to improve his safety record, which in the instant case was a condition of employment. Under the circumstances herein involved, this Board would be remiss in their responsibility not only to the claimant but to his fellow workmen, insofar as safety to life and limb is concerned, and subject the Carrier to unwarranted potential liability, if it sees fit to disturb the discipline of discharge assessed in the instant case.

For the reasons stated above, the Carrier respectfully submits this claim should be dismissed.

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 employes 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 were given due notice of hearing thereon.

1. **Websters New International Dictionary**, second edition, defines an **accident** as "A befalling, an event that takes place without ones foresight or expectation, an undersigned, sudden and unexpected event." It further defines **prone** as "having a tendency, propensity or inclination; disposed".

2. Under Rule "L" of Carrier's book of Rules, the Carrier has every right to demand observance of all safety rules.

3. If an employe is discharged for violation of safety rules, that violation should be brought out at once.

4. Statistical information is quite valuable as an investigative tool, and to enable the Carrier to prognosticate a course of action.

5. A conclusion that a person is accident prone is not logical or reasonable. The mathematics of Possibility and Probability enter into this matter. It is possible that Nobody in the carrier's service would have an accident for a year, although it is not probable. It is equally possible that one person in the employ of the carrier at this location would have all of the accidents in one year. This statistical and mathematical concept would not even infer that the person having those accidents had violated the safety rules.

6. Employe can be discharged by the carrier for violation of safety rules. The analysis of his injuries by the Carrier, will not be considered, as it is opinion, and not evidence. The fact of injuries is admitted, but the cause must be considered and proved.

7. Claimant was discharged because of statistical information, and not for violation of safety rules.

8. Undoubtedly the Claimant was injured as shown in the record. However, the fact of an injury is not adequate to show a violation of Rule L or a violation of a safety rule. The fact that he had injuries is not controlling. It must be shown that the Claimant caused those injuries by his own carelessness or violation of safety rules.

9. Claimant should be reinstated without loss of seniority rights and with all of the benefits he would have received under the agreement, and he should be compensated for all time list, less any amount he has received from other employment during this period.

AWARD

Claim sustained, subject to above qualifications.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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