

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 6, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the controlling agreement Carman Harry Palmer was unjustly dismissed from the service on November 2, 1977.
2. That accordingly, the Carrier be ordered to restore Carman Harry Palmer to service with all seniority and service rights unimpaired, and compensate him for all time lost retroactive to November 2, 1977.

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.

Claimant was employed by the carrier for more than eight years prior to his assignment on October 11, 1977 to the spot repair building in Kansas City, Kansas. On that day, the claimant was assigned to work on vehicles in the adjoining yard. In the course of proceeding to the location where he would perform his duties, the claimant crossed over some tracks while taking a short cut. In the course of crossing the tracks, he tripped and fell.

The claimant sustained no serious injury in the fall, but bruised his left knee. The injury was reported to his supervisors as is required by the Company regulations. The claimant talked with the supervisor and described the incident and the fact that he was not injured. The claimant lost no time from work as a result of the injury.

Following a hearing on the matter, the claimant was discharged. The basis for the discharge was stated to be the violation of safety rules.

The position of the claimant is that the penalty of discharge is too severe for the alleged infraction of the safety rules. He argues that the injury resulted in no loss of work and therefore, no loss to the employer. Numerous decisions are cited in support of his contention.

The hearing conducted into the incident of October 11, 1977 discussed the injury to the Claimant as outlined in the statement of charges lodged against him. It did not review or discuss his prior accident record.

Carrier, nevertheless, took into consideration his previous injury and accident record when it issued the notice of discharge. There is no question but that the hearing developed substantial evidence against Claimant and proved his responsibility for the incident on October 11, 1977. It clearly shows that Claimant acted in disregard of Carrier's rules and his personal safety, and that this was the proximate cause of his injury. However, there was no mention of his previous record during the hearing (as we said previously), and, we thus must consider whether Carrier could discharge Claimant properly in light of this circumstance plus the fact that Claimant was not previously disciplined for any other injuries or accidents which he sustained during his career.

Third Division Award 22103, citing Award 1 of PLB 1926, involved very similar circumstances. The conclusion in both of those cases was that Claimants there should be reinstated without pay for time lost. Those decisions are incorporated herein by reference, and, on the basis of those awards, we find that Claimant should be reinstated with seniority and all other rights unimpaired, but without pay for time lost.

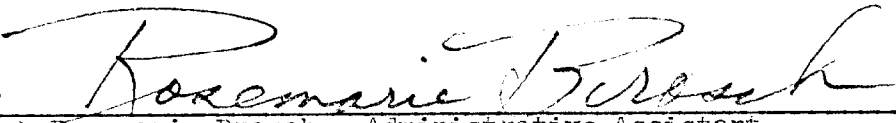
A W A R D

Claim sustained as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of December, 1979.