

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington 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 Carrier violated the controlling agreement when they unjustly dismissed Carman E. Sizemore from service following investigation held on November 16, 1978.
2. That accordingly, the Carrier be ordered to reinstate the claimant to service with all seniority rights, vacation rights, health and welfare benefits and all other privileges that are conditions of employment unimpaired as well as compensation for all lost wages plus 6% per annum due to the Carrier's action.

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 were given due notice of hearing thereon.

Claimant entered the service of the Carrier on September 23, 1972. Claimant had 6 personal injuries in an 18 month period, i.e., May, 1976 to November, 1978, the last two occurring on November 2, 1978. The Claimant, in letter dated November 8, 1978, was notified of investigation to be held on November 16, 1978, to answer the following charges:

- "1.) Being away from your assigned work location at the time your personal injury occurred at 8:30 PM, November 2, 1978.
- 2.) Having six (6) personal injuries since May 1976, of which three (3) has resulted in loss time injuries."

The investigation was held as scheduled. At the outset, the Organization takes the position that the notice of investigation was not precise in accordance with Agreement rules. The Organization further contends that charge No. 1 was not proven and that charge No. 2 placed the Claimant in double jeopardy inasmuch as he had already been tried for the previous charges of personal injuries.

The Board has carefully reviewed the charges as set out in Carrier's notice of November 16, 1978, and finds ample information contained therein to fully meet the provisions of Rule 32. Considering the testimony and conduct of the Claimant and his representative at the investigation, it is clear they were prepared for the investigation and were sufficiently notified of the Carrier's charge. The Board hereby holds that the Claimant was clearly advised of the precise charge and will, therefore, dismiss the procedural issue.

We have carefully reviewed the entire transcript of the investigation and briefs furnished by both parties and find that the Claimant was given a fair and impartial hearing and that none of the Claimant's procedural rights were violated.

As to the Organization's contention that charge No. 1 was not proven this Board, in reviewing the transcript of investigation, has fully taken into consideration all the points so forcefully raised by the Organization in the Claimant's behalf. In spite of the Organization's vigorous appeal, the Board finds no support for the claim and no justification to substitute its judgement for that of Carrier.

The facts developed in the investigation conducted on November 16, 1978, confirmed that Claimant had 6 alleged injuries, covering a span of 18 months.

The record also shows that Claimant had previously been dismissed and reinstated on a leniency basis for violation of Carrier's safety standards.

"Accident proneness" was defined in First Division Award 20 438:

"\*\*\* The Division understands that an accident prone employee is one who has demonstrated a propensity to get hurt in performing service in his occupation under conditions where successive injuries could have been avoided if the employee had exercised more care of foresight or had possessed better physical or mental traits, such as faster reflexes and better neuro-muscular coordination. Evidence suggesting accident-proneness would include a rate of accident frequency and/or severity that is significantly higher for said employee than the rates which in the light of past experience might reasonably be expected of him.

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Accident proneness usually involves a continued behavioral pattern of susceptibility to getting hurt."

This principle has been upheld by numerous awards of this and other Boards.

The Board has objectively taken into consideration the Organization's letter to this Board dated March 18, 1981, making extensive arguments regarding Carrier's including in its submission to this Board that Claimant had previously been

dismissed and reinstated on a leniency basis for violation of Carrier's safety standards. The Organization contends that this argument and information was not discussed by the parties during handling of this claim on the property.

The principle has been well established in prior decisions of this and other Boards that in determining the degree of discipline, after a violation has been established, a Carrier may take account of an employee's entire service record. Not only is it proper to do so, but necessary on grounds of equity and justice. The Board also notes that the complained of statement was included in a joint statement prepared and signed by both parties dated April 19, 1979, and was included by the parties as exhibits to their respective submissions to this Board. The Board, therefore, holds that none of the Claimant's procedural rights were violated.

Based upon the entire record in the case before us, as well as the Claimant's past record, the Board finds that the Carrier is not required to retain in its service an employee who cannot, or does not, perform his work with safety to himself or to other employees. In spite of the Organization's vigorous appeal, the Board can see no reason to substitute its judgement for that of Carrier. Therefore, this claim must be denied.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1982.