Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10395
SECOND DIVISION Docket No. 10327
2-CRC-MA-'85

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Thomas R. Everly to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinist rate of pay.

2. That Machinist Thomas R. Everly be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 7-A-1 (e) of the prevailing agreement which was effective May 1, 1979.

3. The Consolidated Rail Corporation violated Rule 6-A-1 (a) and (b) of the prevailing Agreement effective May 1, 1979.

4. The Consolidated Rail Corporation violated Rule 6-A-3 (a) of the prevailing Agreement effective May 1, 1979.

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 employes 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 16, 1973 Claimant was hired by Carrier as a Machinist, and at the time of his dismissal from service was employed at Carrier's Selkirk Diesel Terminal, Selkirk, New York. Claimant was withheld from service on November 19, 1981, pending formal investigation, and was dismissed on March 2, 1982.

Claimant was charged with (a) being accident prone, and (b) failing to conduct himself in the performance of his duties in such a manner as to avoid personal injury, thereby, establishing himself as an unsafe and unsatisfactory employee.

The Organization's contention that the charges levied against the Claimant were vague is without merit. The Carrier did not violate Rule 6-A-3(a) in that the charging letter set forth the precise time, date and place of investigation. Claimant received sufficient time by way of postponements of the formal investigation to more than adequately prepare his defense. In adition, the charging letter set forth for each of the thirteen (13) accidents, the date of injury, the injury itself, and the manner in which the injury was incurred.

The Organization's position that the Claimant was not guilty of the charge as he had not been shown to have violated a safety rule is also without merit. The question is not whether the Claimant incurred injuries in violation of a specific rule upon which a charge of "accident prone" is based. Rather, it is that an employe so conducts himself in the course of his work activities that he has a rate of accidents greater than the average number of accidents for employes holding the same or similar positions, and performing the same or similar work.

However, the inquiry into whether an employee is accident prone is a charge that is not subject to facile application based on numbers alone. There are no hard or fast rules that this Board can apply to such a charge. A charge of "accident prone" requires a review of the manner in which the accidents occurred; the frequency of accidents, i.e., whether they have occurred randomly over a long period of time or are "bunched" together over a short period of time; the seriousness of the injuries to person or property; and, the consensus of shop employes who have worked with the employe so charged and are in a position to evaluate the danger posed to themselves by their fellow employe's continued employment.

In the instant appeal the Carrier established that the Claimant's total number of accidents of thirteen (13) over the period of his employment well exceeded the average of 3.46 for all machinists employed at the Selkirk Diesel Terminal during the same period. In addition, Claimant was involved in five (5) of these accidents in the eighteen 18) months which preceeded the charge.

In counterpoint to these figures, the Claimant incurred very little time lost as a result of the accidents which involved minor bruises and sprains to his own person. In fact, thirteen (13) employes who worked with the Claimant described him as "safe," "not careless" "conscientious," and that he "always looked out for himself and the people that worked with him." This Board is of the considered opinion upon entire review of the evidence of record, including the increasing frequency of accidents involving the Claimant, that he was guilty of the charge of being accident prone.

However, the Board further finds that the Carrier abused its discretion in suspending the Claimant pending trial on the charge pursuant to Rule 6-A-1(b) which provides as follows:

> "When a major offense has been committed, an employee suspected by the Company to be guilty thereof may be held out of service pending trial and decission (sic) only if their retention in service could be detrimental to themselves, another person or the Company."

While the Carrier's charging officer's basis for suspension was that Claimant's record indicated to him that "... a problem was present with Mr. Everly which could result in serious injury to Mr. Everly or fellow employees...," Claimant's accident record does not support such a conclusion. Claimant over an eight (8) year period suffered only minor sprains and bruises, and on the record absolutely no evidence existed that the Carrier's employes, including the Claimant, were subject to serious injury. Claimant's pretrial suspension was unwarranted.

This Board finds that the penalty of dismisal was excessive and unreasonable based on the evidence of record and the lack of progressive discipline on Carrier's property. Therefore, Claimant shall be reinstated to Carrier's service without back pay from the date of his dismissal. Claimant shall be compensated for the difference between the amount he earned while suspended from Carrier's service between November 19, 1981 and March 2, 1982, and the amount Claimant would have earned on the basis of his usual assigned working hours during the same period, less any sick pay benefits received by Claimant during the same period.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May, 1985.