

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of discipline of dismissal from service reduced to time held from service, imposed on Avon, Indiana Electrician J. D. Walker by Consolidated Rail Corporation effective November 25, 1986.

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 were given due notice of hearing thereon.

Claimant entered Carrier's service as a laborer on July 31, 1979. The next day he was made an Electrician. During the next seven years Claimant's employment was not regular because of furloughs and layoffs. In all, he worked approximately 34 months during this period.

On October 17, 1986, Claimant was served with an Investigation Notice contending that he was accident prone in that he had sustained three personal injuries in the time that he had been employed by Carrier. These injuries were:

"August 28, 1980 - Sore muscles, lower back, Circumstances - 'Mr. Walker as lifting single locomotives batteries from broken skid inside trailer, onto new skid, he felt slight pain in lower back. He did not consider it serious enough to seek medical attention.'

Time lost - none

June 6, 1981 - Bruised lower back and right knee Circumstances - 'While washing Unit 9604, on west and south, water hose hung up causing employee to loose balance and fall to floor, as he grabbed for hand-rail.'

Time lost - 12 days

September 29, 1986 - Sprained right ankle Circumstances - 'Employee was crossing over the south fuel pad track when he stepped from crosswalk to the pad, his right foot turned as it made contact with the pad.'

Time lost - unknown"

At the Investigation Carrier introduced statistical data which it contended demonstrated that Claimant was accident prone in relationship to other employees assigned to the shop. Subsequently, it notified Claimant that he was dismissed in all capacities.

The dismissal was appealed to Carrier's Director Labor Relations. On May 28, 1987 he concluded that the charges were substantiated by the Investigation, but reinstated Claimant on a leniency basis stating:

"...in view of this personal record otherwise, solely on the basis of leniency we are reducing the discipline from dismissal to a suspension equal to the time he will have been out of service."

There are a number of Awards of this Board and various Public Law Boards that conclude that Carrier need not retain in its service accident prone individuals. On this point see Second Division Award 8912. There are also a number of Awards of this Board and various Public Law Boards that conclude that a Carrier may validly demonstrate that a particular employee is accident prone by use of comparable statistical data from the shop or work place. On this point see Second Division Award 11237. And, finally there are a number of Awards on this Board and various Public Law Boards that conclude that an adequate demonstration of being accident prone can be established simply by showing that a particular individual experienced an inordinate number of injuries during a particular period of his employment career. On this point see Award No. 1 PLB 542.

We do not quarrel with this authority and fully endorse the notion that Carrier need not continue in service individuals that are demonstrated to be accident prone. Noteworthy in this regard is the following from Award 1, PLB 542:

"When the Board examines the Claimant's service record it finds that he has been involved between 1952 and 1967 in a substantial number of accidents arising from train operations with the

exception of the incident on August 16, 1964 when the foreign object flew into his eye while riding cars in McKees Rock Yard. Many of these injuries necessitated prolonged absences from work, such as the injuries on June 22, 1955, November 10, 1955, March 20, 1962, December 17, 1964 and June 13, 1967. Other injuries have subjected the Carrier to expensive litigation. The Carrier after fifteen years of this sort of experience can properly determine that an employee, who has been involved in twenty-two incidents resulting in personal injuries, is an accident-prone employee whom it cannot afford to retain in its employ."

However, in this case we fail to see that Carrier has established that Claimant was accident prone. In the Investigation there is absolutely no testimony or evidence that Claimant was not performing his job safely, with all required apparel, i.e. safety shoes, hard hat and goggles, at the time of the injury. There is no testimony that any of Claimant's injuries resulted from a failure to follow safety rules. There is also no testimony that prolonged absences from work resulted from the injuries or that Carrier was subjected to expensive litigation and costs as a result.


Instead, Carrier's entire case seems to be based on imperfect statistical data, developed for the sole and exclusive purpose of demonstrating at the Investigation that Claimant was, on an average, injured more times than other employees in the shop. With but three injuries, occurring in an seven year span, at least one of which did not result in lost time, Carrier's statistics fall woefully short of demonstrating Claimant was accident prone.

From our study of the entire record in this matter and the authorities relied upon by the parties it is our conclusion that Carrier has not established an adequate basis to discipline Claimant on an allegation that he was accident prone. Accordingly the dismissal, converted to a suspension, will not be allowed to stand. Claimant shall be compensated for the time held out of service as provided in the discipline rules of the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.