

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25034

Docket Number MW-25228

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way **Employes**

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

(Former Chicago & Eastern Illinois Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Welder Helper L. E. Langley for alleged "violation of General Rule L, Rules 15 and 16" was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (Carrier's File **S 214-127**).

(2) The claimant shall be reinstated with seniority and all other rights **unpaired**, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Claimant was notified to attend an investigation to determine the facts and the extent of his responsibility after being charged with carelessness in the performance of his duties, resulting in an alleged injury to his back.

Subsequent to the investigation, the Claimant was notified that he had been found guilty and was dismissed from the service of the Carrier. The Carrier, after its finding of guilt, contends that it considered and gave weight to ~~the~~ Claimant's past work history, with respect to injuries and, on the basis of all relevant information, arrived at its decision to dismiss the Claimant.

The Organization essentially argues on procedural grounds, maintaining that the Carrier has not met its heavy burden of proof in the case before us, and that it fundamentally disciplined the Claimant on the basis of his prior record.

While it is certainly true that the Organization's arguments are not without merit, the evidence of record shows that the Claimant had been put on notice with respect to his earlier injuries. **He** had been counseled as to his work habits and the safety rules. Accordingly, given this background, the Carrier's conclusion, based on all of the facts presented, that the Claimant did not properly protect himself from injury, is not an unreasonable one. Having thus found, it could properly consider the Claimant's past work record, given the facts and circumstances of the record before us. Therefore, there is no basis to disturb the action of the Carrier, and the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.