

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25895  
Docket Number MW-25868

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman D. Gray, Jr. for allegedly being accident prone was without just and sufficient cause and on the basis of unproven charges (System Docket CR 222-D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wages lost."

OPINION OF BOARD: The Claimant was notified to attend a formal hearing on June 1, 1983, in connection with the following charge:

"Being accident prone in that you have had seven (7) personal injuries during the period May 21, 1976 to May 28, 1983, the date of your latest injury which you reported to B. Dipasquale, Ass't Supervisor Track, at approximately 10:00 A.M., May 2, 1983 at Highlandtown, Baltimore, MD."

Following the hearing, Claimant was notified that he was dismissed from service by a notice dated June 15, 1983.

We have considered each of the Organization's contentions arguing procedural defects and we find them to be without merit. Claimant was properly notified of the June 1, 1983 hearing and signed a Certified Mail "Return Receipt" for the notice of hearing on May 28, 1983. Claimant reported his injury to the Carrier by filling out an accident report on May 2, 1983. Such was within the thirty day period required by Rule 27(1)(d). The charge of being "accident prone" was a proper charge. And, the denial of a postponement on the morning of the hearing under the circumstances of this case, was indeed proper.

Claimant was hired as a Trackman on November 8, 1973, and suffered seven personal injuries during the seven year period between May 21, 1976 and April 28, 1983. Under the Carrier's Employee Counseling Program--Safety Performance, instituted in May 1982, Claimant attended a personal injury review in the Track Supervisor's Office in Baltimore on March 25, 1983. At that time he had suffered six personal injuries while in the service of the Carrier. Engineer Kreiss wrote Claimant a letter outlining the purpose and objectives of the meeting. The letter stated as follows:

"Dear Mr. Gray:

On Friday, March 25, 1983, you attended a personal injury review in the Track Supervisor's Office, Baltimore, MD. As you may recall, we discussed your personal injuries, and how you can avoid being injured in the future and the injury experience of your fellow employees, immediately preceeding and following you on the roster, and the fact that they have sustained fewer personal injuries than you.

The purpose of the conference was to make you aware of your injury experiences, Conrail's safety rules, their importance to you and your fellow railroad employees.

We sincerely hope this meeting was beneficial to you and we will assist you in your efforts to be a safe, productive and efficient employee."

The Carrier was well within its rights and obligations to Claimant, his fellow employees and the Carrier itself to take the time to review Claimant's personal injury record on March 25, 1983, and to take time to instruct him on how to avoid injury in the future. We find that the record discloses Claimant's accident proneness. We believe, however, that the discipline imposed by his discharge on June 15, 1983 has now served its purpose as to the absolute necessity that Claimant work in a safe manner if he is to continue his employment with the Carrier. Claimant shall be returned to service with all rights unimpaired, but without backpay.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline was excessive.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.