

The Third Division consisted of the regular members and in addition Referee John W. Gaines when this award was rendered.

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 J. M. Taylor for allegedly 'Being accident prone' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket CR-203-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 wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This Claim, cited in Third Division Award 25672, is on Remand from U.S. District Court (W.D., Pennsylvania) ordering that we "....determine whether the employees involved herein were responsible in whole or in part for the reported accidents in question, in order to determine as a matter of fact, whether an employee is accident prone to the degree that he should be discharged from his employment."

The U.S. District Court Order was submitted on appeal to the U.S. Court of Appeals but was not taken on appeal. 864 F.2d 283 (3rd Cir., 1988). Speaking for the Court, Hon. Dolores Korman Sloviter, Circuit Judge, concluded that posture of the Remand Order, being interlocutory, did not render it final and appealable.

In Award 25672, dated October 28, 1985, the Board found that the Carrier had given Claimant progressive and extensive counselling on work habits, safety, avoidance of injuries and his personal disproportionate ratio of same. Nevertheless, Claimant continued to accumulate on-duty accidents in sizeable number. In fact, in terms of actual work exposure (adjusted for period of suspension for cause and other time off duty), Claimant's accident rate was entirely disproportionate to other employees. The Board determined as a fact that Claimant's cumulative accidents on the job, generally resulting in injury and consequent lost-time, were excessive compared to other workers of his craft; there were no mitigating circumstances; and found the discipline imposed was not arbitrary.

The Award followed the Board's prevailing standard, viewing each situation and surrounding circumstances in disputes of this character on an individual basis. There are no absolutes, so that mitigating factors can be considered and given full weight.

The Board reconvened as directed by the Court, and the opposing parties were duly heard as they presented arguments in support of their respective positions. Each party in closing commented on and offered copies of various prior Awards and published Opinions; the Board accepted and subsequently considered the Awards and Opinions.

After considering the parties' presentations, and following up with another careful review of the entire record in this matter, the Board is convinced that the facts and evidence established in the record as a whole adequately justify Carrier's dismissal of the Claimant.

A W A R D

The decision in Award 25672 is affirmed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.