

The Third Division consisted of the regular members and in addition Referee David P. Twomey when 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 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."

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 waived right of appearance at hearing thereon.

On July 18, 1988, the United States District Court for the Western District of Pennsylvania issued an Order remanding the case decided by Third Division Award 25895 to the National Railroad Adjustment Board for further consideration as follows:

"...[T]his Court will remand this case to the Adjustment Board in order for it to hear evidence as to whether Petitioners Gray and Taylor were sufficiently responsible for the accidents in question (sic) to warrant their dismissal."

The Hearing on remand before the Third Division of the National Railroad Adjustment Board was held on January 26, 1990.

The National Railroad Adjustment Board is an appellate body which hears and decides each dispute on the basis of a record made on the railroad property by the parties to the dispute. Under Circular No. 1 of the National Railroad Adjustment Board, and its consistent interpretation by literally hundreds of Awards, the parties are prohibited from introducing evidence before the Board which was not part of the dispute handled on the property. This prohibition has applied to all cases, including cases on Remand from the United States District Courts. This Board then must confine itself to the record established on the property.

The standard applied by a line of Awards on the property and in the industry and utilized by the Board in Award 25895 was to determine if Mr. Gray was accident prone by a statistical analysis of his injury record over the years when compared to other employees with similar seniority. This standard is not one where the Carrier has to demonstrate that the Claimant was responsible or at fault for the injuries in question. Please refer to pages 38 and 39 of the Transcript for a comparison of Mr. Gray's injury record with that of comparable employees. Mr. Gray had six injuries as of March 25, 1983, as set forth in Award 25895. It is on this record set forth on page 39, as corrected, that we found Mr. Gray to be accident prone. The Carrier had counseled Mr. Gray on March 25, 1983. Major discipline was appropriate as a result of the June 1, 1983 Investigation. In Award 25895 the Board held:

"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."

We found that the discipline of permanent dismissal was excessive and we sustained the Claim in accordance with the Opinion. We continue to believe that such was a proper decision, and it is hereby affirmed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy G. Bever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.