

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30990
Docket No. MW-31640
95-3-93-3-652

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

- (1) The December 1, 1992 dismissal of Bridgetender R. E. Bounds for allegedly being '... accident prone and your inability to work safely ***' was without just and sufficient cause, excessive, on the basis of unproven charges and in violation of the Agreement [System File 17(41)(92)/12(92-1419) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges 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 employee 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 October 26, 1992, Claimant was charged with being accident prone based upon his record of 13 injuries in 16 years of service. On December 1, 1992, Claimant was dismissed from service following

a timely held Investigation.

Before discussing the merits, the Organization raised a procedural issue of an untimely notice, or more precisely, not serving a notice of charges within a reasonable time frame.

The parties to the Agreement have not found it necessary to establish a time frame in which the notice of charges must be served and this Board does not have the authority to do so. Suffice to say, the notice of charges was served within a reasonable time as is evident by the Claimant's lack of surprise and clarity of memory as established in the Investigation.

There exists a number of Awards concerning this very issue of being "accident prone." Of the abundance furnished this Board by both parties, it is found that there are sufficient Awards on this property that have been cited that assist this Board in developing a guideline to be followed in reaching a conclusion.

The Organization cited Third Division Awards 28917 and 30747 in addition to Award 482-A of Public Law Board No. 3561.

The Carrier cited Third Division Awards 29423 and 29543; Case 48, Public Law Board No. 3946 and Award 121, Public Law Board No. 3741. (The Carrier also cited what appears to be proposed Award 164, Public Law Board No. 3741, but more on that later).

In the Awards cited by the Carrier, it was found in each case that the Claimant therein was negligent in performing the work assigned and that fact, coupled with the number of prior injuries sustained, despite counselling, was sufficient in each instance for the respective Boards to uphold the discipline.

In the Awards cited by the Organization it was held that statistics alone were not sufficient to establish the individual was "accident prone." Some history of discipline for violation of Safety Rules was necessary, as well as counselling.

Therefore, all of the Awards cited as precedent that involve this property have established, in this Board's opinion, a pattern or approach to the matter of being "accident prone," that is counselling and evidence of negligence.

In this instance Claimant was counselled, but has never been found negligent, careless or in violation of any Safety Rule. Carrier attempted to influence the Board to believe that the last injury sustained by Claimant was not a necessary act, that the bridge rails did not have to be aligned with a sledge hammer as the

bridge had been repaired, but no evidence was introduced other than a statement from three other Bridgetenders saying they had no problem with the bridge after it had been repaired.

Claimant's history of 13 injuries in 16 years appears to be somewhat of an anomaly.

Under the circumstances, Claimant lost over two and one-half years of work. Perhaps this time off will impress upon him the necessity that if he is to continue his career, he must work safely and perform service consistent with Carrier's Safety Rules.

Claimant is to be reinstated to service with all seniority rights intact, but without pay for time lost.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.