

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22130
Docket Number MW-22092

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Alton & Southern Railway Company

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

(1) The dismissal of Trackman Eardee Gladney, Jr. because of a personal injury he sustained while on duty on July 13, 1976 was without just or sufficient cause and was arbitrarily, capriciously and unreasonably imposed (System File K-1638-58/A&S 1976-5).

(2) The charge placed against the claimant did not meet the specificity requirement of Rule 20(a); the hearing officer permitted the introduction of evidence not related to the 'charge' against the claimant in violation of Rule 20(c); the hearing was not fair and impartial as stipulated within Rule 20(a).

(3) As a consequence of either or both of (1) and (2) above (any one or more of the procedural errors of 2 above), the charge shall be stricken from the record, the claimant shall be reinstated to his former position and he shall be allowed payment for monetary loss sustained, all in accordance with Agreement Rule 20-A(a)."

OPINION OF BOARD: On July 15, 1976, Claimant was notified to report for a formal investigation to be concerned with a personal injury (which had occurred two days before) as well as his accident and personal injury record.

Subsequent to the investigation, the Employee was notified that his services were terminated as a result of the July 13, 1976 incident and eight prior injuries during the preceding four and one-half (4½) years.

We do not concur with the Organization that various asserted procedural deficiencies require a sustaining Award.

We feel that the "charge" against the employee was sufficiently broad - and was of such a nature - that a record of previous injuries sustained by the Employee was properly a matter for consideration.

Carrier asserts that its action of termination was fully warranted, and it asserts that the Claimant was "...apparently accident prone and should not be permitted to remain in service--..."

Our attention has been invited to Award No. 1 of Public Law Board No. 1926. That Award considered many of the same factors which are presented in this dispute and it noted that the Employee - in the cited case - had a number of accidents as a result of carelessness and disregard for safety rules, which constituted culpable misconduct for which discipline was appropriate. Nonetheless, an absence of prior warnings or progressive discipline resulted in a finding that the ultimate penalty of termination was too severe.

No purpose is served by detailing, at length, the holdings contained in the cited Award. Suffice it to say that for many of the same considerations noted therein, we will restore the Claimant to service with retention of seniority and other rights, but without pay for compensation lost during the period of the suspension.

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 discipline was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.