

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23824  
Docket Number MW-23882

Paul C. Carter, 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 Randy R. Raska for alleged insubordination because he failed to read a safety rule as instructed and for allegedly 'presenting a hazard to himself and others due to inability to read' was without just and sufficient cause and on the basis of unproven and disproven charges (System Docket 446).

(2) Trackman Randy R. Raska shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The record shows that claimant entered Carrier's service as a trackman on April 13, 1978, and was employed in that capacity at the time of the occurrence giving rise to the dispute herein.

On the morning of November 28, 1978, at approximately 6:00 a.m., there was a safety meeting held at the Camp cars at Chesterton, Indiana. A rule book was passed around and each man was told to read one of the safety rules. When it came time for the Claimant to read from the rule book, the Claimant did not read the rule and in subsequent investigation, or trial, conducted on December 22, 1978, he stated that the reason he did not read the rule was:

"Because I don't know how to read."

There was evidence in the trial by other employees that when the safety rule book got to the Claimant to read he stated that he did not know how to read. In the investigation, or trial it was developed that there were other men in the gang who did not read the safety rule, but simply passed the book on to the next man. It is not shown that any action was taken against the other men who did not read the safety rule.

The charge against the Claimant leading up to the investigation or trial was:

"Insubordination--failure to read the safety rule as requested by L. Oldham, Assistant Track Supervisor, during a safety rule class November 28, 1978, at 6:00 a.m. at the Camp Cars at Chesterton, Indiana. Also charged with presenting a hazard to himself and others due to inability to read."

When questioned as to his educational background, Claimant stated:

"Second grade level in reading and fifth and sixth in math.  
But I went all the way to the eleventh grade."

When questioned as to filling out of his application for employment form, Claimant stated:

"When I came I told the lady I couldn't read and she said it doesn't have nothing to do with it. I had the guy next to me fill out the application form and she accepted it."

Following the trial, the Claimant was dismissed from the service. The claim before the Board was then handled in the usual manner on the property by the Organization, and, failing of adjustment, was referred to this Board. In the hearing of the dispute before the Board, in addition to representatives of the Organization, the Claimant and his wife were present and made presentation.

The Carrier states that during the handling of the dispute on the property, it offered to restore Claimant to the service on April 20, 1979, with time out of service to apply as discipline, provided Claimant would take a reading course. No reply was received during a ten-month period.

The Board is fully cognizant of the importance of safety in railroad operations, the right of the Carrier to issue rules pertaining thereto, and to expect employees to comply with the Safety Rules. In this case, we do not consider that Claimant failed to comply with any safety rule. Claimant's inability to read the safety rule was unfortunate, but such inability did not constitute insubordination. Claimant did make an effort to read the rule. Some of the blame, if any, may rest in the manner in which his application for employment was handled. There is no evidence to support that part of the charge reading:

"... with presenting a hazard to himself and others due to inability to read."

We will award that Claimant be restored to service with his former seniority unimpaired and that he be paid from the date he was removed from service until April 20, 1979. Any loss from that date was of his own volition. Furthermore, he was required to mitigate his damages. Claimant should understand, however, that he will be expected to take and complete a reading course.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.