

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26161
Docket Number MW-26158

Peter R. Meyers, 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 R. K. Maddocks for alleged violation of Rule 'B' and for allegedly being an unsafe and unsatisfactory employee, was arbitrary, capricious, unwarranted and in violation of the Agreement (System Docket CR-356-D).

2. The claimant shall be reinstated 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."

OPINION OF BOARD: Claimant was employed by the Carrier, as a Trackman at Morrisville, Pennsylvania with a seniority date of August 25, 1975. On June 22, 1983, Claimant allegedly suffered an on-the-job shoulder strain; he immediately reported the injury to his Foreman and was examined by a doctor who authorized his return to service. On July 20, 1983, Claimant was notified to appear at a Hearing on the charge that he had violated Carrier's Rule B, Paragraph 2, when he allegedly failed to perform his duties so as to avoid personal injury. Rule B, Paragraph 2 states that employees "must follow instructions from proper authorities and must perform all duties efficiently and safely." After postponements, the Hearing was held on July 27, August 1, and August 30, 1983. By letter dated September 7, 1983, Claimant was dismissed from service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed all of the testimony and evidence in this case, and we find that there is substantial, credible, and probative evidence to support the finding that the Claimant is guilty of the charges of failing to follow instructions and perform his duties safely and efficiently and of being an unsafe and unsatisfactory employee. The record is clear that although the Claimant had been instructed concerning the proper use of tools, he used the wrong tool on the date in question, thereby causing his injury. Hence, he was properly found guilty as charged.

Moreover, the record establishes that the Claimant had incurred nineteen injuries in the previous seven years and that that rate is significantly higher than the rate for other employees. The record is clear that the Claimant is a significant hazard to himself, his fellow employees, and the Carrier; and the prior injuries he has incurred, as well as the counseling he has received, have not had the effect of improving his poor work habits. He was properly found to be an unsafe and unsatisfactory employee.

With respect to the procedural claims raised by the Organization, we find that the Claimant received sufficient notice of the Hearing and that he also received a fair and impartial Hearing. There is no evidence that the Claimant's due process rights were prejudiced in any way.

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

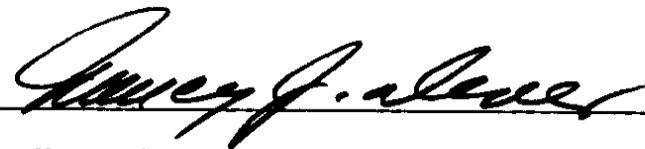
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1986.