

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

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

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

(1) The five (5) days' suspension assessed against B&B Crane Operator G. E. Loomis for alleged '*** responsibility in connection with personal injury that he sustained ... on August 30, 1990 ... [and] being "accident prone"' was without just and sufficient cause, arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement [System File 4(16)(90)/12(90-921) LNR].

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant's record shall be 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 employe or employes involved in this dispute are respectively carrier and employes 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.

The dispute in this case centers around a crane operator who, while on duty and under pay, sustained a personal injury while performing an act directly related to the operation of his crane. The Claimant was subsequently charged with "responsibility in connection with personal injury sustained You are also charged with being 'accident prone,' this being the seventh personal injury incident that you have reported." Following a Hearing on these charges, Claimant was assessed a five day actual suspension because "you violated Rule 18 of the CSX Transportation Safety Handbook when you stepped on the slippery deck surface." The notice of discipline also stated as follows:

"The investigation also revealed that you had reported four previous injuries relating to the same crane as your injury of August 30, 1990."

The notice of discipline did NOT indicate any finding of guilt on the "accident prone" portion of the charges. The above quoted excerpt from the notice of discipline is the only obtuse reference the Carrier made to that portion of the charges.

Thereafter, the five day suspension was appealed through the normal grievance procedures on the property, and, failing to reach a satisfactory resolution thereon, the issue has come to this Board for final and binding adjudication.

Each party has advanced numerous arguments and contentions relative to their respective positions. They have cited numerous Awards in support of their respective arguments. We have reviewed all of the citations and have considered all of the arguments. We have, in addition, read and studied the Hearing transcript as developed on the property.

We do not find it necessary to answer each of the several positions advanced. Some of the arguments we fully endorse, such as Carrier's contention that employees may not be permitted to work in an unsafe manner, to violate Safety Rules, and to be a source of danger and potential liability to themselves, to other employees and to the Carrier.

However, having said that, we are unable, in this case from this Hearing record to find that this employee acted negligently at the time and place in question. The fact that an injury did occur, did not, ipso facto, prove that overt negligence had occurred.

We need not, in this case, enter into a discussion relative to the percentage probabilities/possibilities theories which have been advanced from opposite directions by the respective parties. We do not, in this case, find that the Claimant was found guilty of being "accident prone." He most certainly was not so notified in the notice of discipline which was issued following the investigatory Hearing.

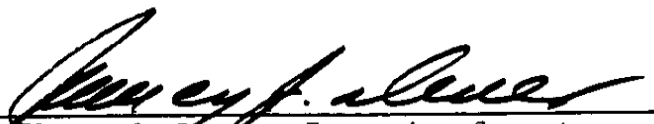
Carrier has not met the burden of proof in this record to support by substantial evidence the imposition of discipline. Therefore, it is our conclusion that this claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.