

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29543  
Docket No. SG-29840  
92-3-91-3-208

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (Former  
(Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSXT, Inc. (Former SCL Railroad):

Claim on behalf of H. L. Williams, for reinstatement to service with all rights and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Discipline Rule, when it dismissed him without cause on April 24, 1989." Carrier File 15 (90-45). BRS Case No. 8230-CSXT.SCL.

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 employe 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 April 24, 1990, the Claimant, a Signalman, injured his ankle by stepping on uneven ballast.

In a letter dated May 4, 1990, the Carrier directed the Claimant to appear at a formal Investigation in connection with the following charges relative to his April 24, 1990 injury:

"You are being charged with non-compliance of CSX Operating Rules 'B', first paragraph; and 'M', first sentence; CSX Safety Rules 1 and 11.

You are also charged with being careless and accident prone."

After the Investigation the Carrier informed the Claimant:

"The transcript shows that you were careless and failed to comply with CSXT Operating and Safety Rules on April 24, 1990, which resulted in a personal injury to yourself and subjected the Carrier to liability for your injury.

The transcript also reveals that you are careless in your work habits and have a propensity for sustaining personal injuries while performing routine duties of your craft, as evidenced by a history of numerous personal injuries during your Railroad career."

In view of the seriousness of the offenses, the Carrier dismissed the Claimant from service effective May 17, 1990.

The Organization argues the Carrier violated Rule 47, Discipline, when it failed to prove the charges against the Claimant. The Organization objects to the Carrier's use of a sample co-worker group as a basis for assessing the Claimant's proclivity for accident. The Organization notes an employee may not always be able to avoid an accident.

The Carrier argues the Claimant was afforded a fair and impartial hearing in accordance with Rule 47. The Carrier notes the Claimant was given proper notice of the charges, sufficient time to prepare a defense, the opportunity to produce and examine evidence, and the opportunity to present and cross-examine witnesses.

The Carrier maintains it sustained its burden of producing substantial evidence of the Claimant's guilt. The Carrier argued the Claimant violated Rule 11. The Claimant worked for nine years, and he had eight previous injuries. The Carrier indicated the Claimant's injury rate is disproportionately high when compared to the injury rates of employees with comparable seniority. The Carrier argued the Claimant's injury rate indicates he is accident prone.

The Organization contends the discipline is arbitrary, capricious, unreasonable, and excessively harsh, in view of the circumstances present in this case. The Organization notes progressive discipline was not applied for previous injuries.

The Carrier maintains the discipline assessed was fully justified. The Carrier cites its obligation to protect the Claimant's welfare as well as that of fellow employees and the railroad. The Carrier noted the Claimant previously served 30, 45, and 90 day suspensions for dereliction of duty and non-compliance with the Carrier's Rules. Therefore, dismissal is the appropriate remedy in this case.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant is guilty of the charge against him. The Claimant's carelessness contributed to his injury.

With respect to the disciplinary action of dismissal for being accident prone, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. Third Division Award 26160. If the Carrier establishes the Claimant's culpability for each accident at the time of its occurrence, previous Awards permit the Carrier to compare the Claimant's injury records to the injury records of other employees. Third Division Award 27223; Public Law Board No. 4389, Award 35. The Claimant is not entitled to an unlimited number of opportunities to flout the standards of reason and due care in the exercise of his prescribed duties before the Carrier may take summary action. Third Division Award 24534.

In this case, the Claimant's injury record of eight injuries in nine years of service compared to the injury record of comparable co-workers greatly exceeds the injury record of other employees with comparable seniority. This evidence, in conjunction with all the evidence of record, demonstrates the Claimant is accident prone. Due to the magnitude of the potential risk to himself, others, and property created by his propensity for accidents, the disciplinary action of dismissal was reasonable.

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