

Award No. /5
Case No. 13

Org. File B-77-1
Co. File 011-181 (P)

Public Law Board No. 1922

PARTIES
TO
DISPUTE:

United Transportation Union (Switchmen)
and
Southern Pacific Transportation Company

STATEMENT
OF
CLAIM:

Claim is made for the reinstatement of Switchman L. L. Padilla with seniority rights unimpaired, pay for any time lost, beginning February 25, 1976, as a result of improper dismissal, and a day's pay for attending investigation, each date, February 19 and 20, 1976, Bakersfield Yard.

FINDINGS: Petitioner challenges the validity of
 claimant's discharge. The reason assigned
for his dismissal is that he had demonstrated in the course
of his employment "a continued behavioral pattern of sus-
ceptibility to injury rendering him unfit to further pursue
the occupation of switchman in that he sustained on-duty
injuries on May 27, 1965, December 20, 1968, June 22, 1971,
May 6, 1972, June 25, August 8 and November 5, 1974 and
September 16, 1975."

The discipline was administered after a hearing
had been held on charges alleging the above mentioned "behav-
ioral pattern." There is no indication that any reversible
procedural error was committed or that claimant was singled
out for discriminatory action. Of 51 switchmen, 20 sustained
no injuries at all while the number of injuries for the re-
maining 31 averages less than 3.

There is testimony by Carrier officials that
claimant was awkward, uncoordinated and slow in reaction.
Dr. Meyers, Carrier's Chief Surgeon, concluded, on the basis
of his examination of claimant in March 1974 and a review of
injury reports that he is accident-prone and "would do a dis-
service to himself, a possible disservice to his fellow em-
ployees and this company if he were to remain as a switchman."
At the same time, Dr. Meyers found him "independent", "strong",

"ambitious" and "should be able to find an occupation more in line with his personality where he would be more successful and happier."

Claimant was employed as a switchmen from May 11, 1964 until February 25, 1976, when he was discharged. Carrier emphasizes he was injured eight times on the job during that period. On May 7, 1965, he sustained head lacerations while attempting to release a handbrake (no loss of time was involved.) On December 20, 1968, he slipped on a brake platform, injuring his lip and a tooth (again without loss of time). On June 22, 1971, he slipped on sand while climbing off a stopped engine; he fractured his right elbow, was operated on for the fracture and lost 10 months 5 days. On May 5, 1972, the first day he returned to work after the June 22 mishap, his right arm, possibly still weak, failed to support his weight and he fell, injuring his left arm and shoulder; he lost 1 year 23 days on this occasion. On June 25, 1974, his eyes became irritated when sand blew in his eyes; he bumped his knee on the engine ladder (four days were lost).

The sixth injury occurred on August 8, 1974 when he was working as foreman and his crew was switching at a shed. He failed, according to Assistant Trainmaster Davis and Trainmaster Bauer, who didnot witness the incident, to observe a red signal light, a protective device used to warn

employees of the presence of gas fumes. Claimant testified that the light was not visible from the location of the crew at the time. At any rate, claimant and his crew were beset by the fumes and sustained irritation to eyes, lungs and stomach (three days were lost).

The seventh and eighth injuries were sustained respectively on November 5, 1974, when 24 days were lost and September 16, 1975, resulting in 48 lost days. In the November 5 incident, claimant hit his right elbow getting on an engine. On the eighth occasion, a sugar beet fell off one of the cars claimant's crew was coupling; it struck claimant causing facial bruises and the loss of several teeth. He hurt his back, elbow and knee as he fell to the ground.

We can appreciate Carrier's concern and are disposed to give management considerable latitude in determining physical fitness for switchman positions. It may well be that a time may come in a man's lifetime, even though he weathers the probationary period and years of employment, when he is no longer physically competent to perform the duties of his assignment.

This record, however, does not provide a sound basis for dismissal. We are not convinced that it demonstrates that claimant was at fault on each occasion. No discipline

had been administered when the first seven injuries occurred. It is of interest that no formal warning or charges were issued, so far as this record shows, when the sixth incident occurred on August 8, 1974, although Carrier insists that claimant failed to observe a signal on that occasion and it was the only occurrence that involved injury to anyone other than claimant. If claimant were negligent or violated any rule, he should have been charged when the incident took place so that he and his Organization would have timely opportunity to meet the accusation. As it stands, the sixth episode was not mentioned in any charge until about 18 months after it had taken place.


While reluctant to set aside Carrier's findings in a case involving fitness to continue in employment, we must also consider the legitimate interests of the employee. If Carrier desires to discipline an employee for negligence, absenteeism or misconduct, it can issue timely charges in that regard. While that factor, standing alone, may not be controlling, the rather circuitous "accident-prone" approach for terminating an employee can be validly upheld only if supported by a strong and detailed record. See Decision 4714 of Special Board of Adjustment No. 18. It is our conclusion that neither the medical evidence nor supervisors' testimony presented in this case is sufficient to establish that claimant

can no longer continue in Carrier's employment.

However, on the basis of this record, particularly the on-the-job injuries and resulting loss of working time, a suspension without pay of as much as 30 days would not be inappropriate to emphasize the importance of avoiding injury and absences. It could be administered in line with the principle of progressive discipline.

AWARD: Dismissal reduced to a 30-day suspension.
Claim sustained in all other respects.

ORDER: Carrier is hereby ordered to make the above
Award effective on or before September 6, 1977.


Harold M. Weston, Chairman


Carrier Member


Employee Member