PUBLIC LAW BOARD NO. 1926

AWARD NO. 1

CLAIM NO. 1

PARTIES TO THE DISPUTE:

International Brotherhood of Firemen and Oilers

and

Long Island Rail Road Company

STATEMENT OF CLAIM:

Claim of International Brotherhood of Firemen and Oilers:

1. That under the current agreement, Laborer C. C. Barnett was unjustly discharged from service on January 29, 1977.

2. That, accordingly, the Long Island Railroad be ordered to reinstate Laborer C. C. Barnett with all Benefits, Vacation privileges and Seniority rights unimpaired and with compensation for all time lost as a result of said action.

OPINION OF BOARD:

This case involves the dismissal from service of Mr. C. C. Barnett who was employed by Carrier as a Laborer. Mr. Barnett entered service of the Carrier in December 1975 and worked from that time until his termination in January 1977 at the Morris Park Locomotive Shop. The record shows that approximately two months after his hiring Claimant sustained an injury while working. During the succeeding eight months he sustained four additional injuries, all of which resulted in time lost from work and for three of which he submitted accident claims and received settlement payments from Carrier. Most of the accidents occurred while Claimant was employed cleaning and washing down locomotive units. Following the fourth such accident in July 1976 Carrier transferred Claimant to work other than locomotive washing. Thereafter while loading brakeshoes

on November 28, 1976 Claimant dropped equipment on his foot and suffered a contusion of his right foot. He was X-rayed and cleared for return to work on December 1, 1976 but he did not come back to work until December 8, 1976. On December 21, 1976 he sought some nine days wages from Carrier's claims department but that claim was denied due to lack of medical verification.

On January 18, 1977 Claimant was called to a trial by Carrier on the following charges:

> "Being an unsafe employee as evidenced by five (5) personal injury accidents since your employment on December 22, 1975, as follows:
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> 1. March 4, 1976 - soap burn, left wrist.
> 2. April 13, 1976 - chemical irritation, right eye.
> 3. June 25, 1976 - bruised left arm.
> 4. July 26, 1976 - sludge in left eye.
> 5. Nov. 23, 1976 - contusion, right foot."

Thereafter, on January 29, 1977 Claimant was dismissed on the basis of evidence developed at the trial. Under date of February 9, 1977, the Organization appealed the discipline and requested expedited treatment of the claim. By joint stipulation of the parties intermediate appeal levels were waived and on March 1, 1977 the claim was denied by Carrier's highest appeals officer. The parties thereafter established this Board to hear and decide this case. A hearing was held by the Board at Jamaica, New York on May 11, 1977. Claimant was notified of the date, time and place of the hearing but declined to appear in person although he was represented by his Organization. The record evidence proves beyond a doubt that Claimant was an "unsafe employee" whether judged on the basis of his individual history or by comparison to other similarly situated employees. Safety statistics show that he personally accounted for one-third of the accidents among Laborers at the locomotive facilities in 1976. Moreover,

of some 80 Laborers employed at the facility, his was clearly the worst accident record. Examination of each of the five accidents involving Claimant during 1976 shows a consistent pattern of carelessness and/or violation of Carrier's safety rules. Thus in both of the eye accidents he was not wearing protective equipment assigned to him; in the soap burn incident he continued to wear gloves soaked with chemicals rather than changing to a fresh pair and he did not report injury or seek aid at the time; a bruised arm and three days of lost work occurred in June 1976 when he tripped over an engine parked in the washing area; and finally he dropped brakeshoes on his foot while stacking same in November 1976. Analysis of the statistical data and his personal accident history leaves no room for doubt that Claimant has been an unsafe employee. Carrier having adduced ample evidence on this point the only question remaining is whether the penalty of dismissal is appropriate in the circumstances.

The central question in this case is whether Claimant's unsafe work record is a result of carelessness or "accident-proneness." The answer to this question is determinative of the further question whether dismissal is appropriate in this case. If the record shows a pattern of carelessness then that is culpable misconduct for which Claimant might appropriately be disciplined. That of course leaves for further disposition the question whether the appropriate quantum of discipline is termination from all services. Included in review of the latter question is whether Claimant has been afforded progressive discipline and the opportunity to conform his behavior to acceptable standards if he can. If, on the other hand, the record established that Claimant was "accident-prone," i.e., due to some physiological or psychological malfunction he is unable to work safely then this is not a case of discipline but rather a nondisciplinary dismissal situation. In such circumstances where an employee is undoubtedly unsafe in his work habits due to a condition over which he has no control the employer is within its rights to terminate the services not as discipline for

culpable misconduct but out of a reasonable regard for the safety of its other employees and operations.

On the basis of a close review of the record before us we are unable to conclude that Claimant's unsafe work record is a result of accident-proneness. As the transcript of investigation shows the evidence is incomplete on this point however because Claimant declined to participate in a full medical examination prior to his trial. We note in passing that at the trial Claimant indicated his willingness then to undergo full examinations and note further the established principle that absent a contract provision the Carrier in its discretion may order an employee to undergo work related medical examinations. In any event the record before us is persuasive that Claimant's accidents were a result of carelessness and disregard for safety rules. This is culpable misconduct for which he may appropriately be disciplined. However upon review of the record we find no pattern of prior warnings or progressive discipline for this misconduct but rather an accumulation of offenses for which Carrier finally decided to terminate the Claimant. The only warnings in Claimant's personnel record were for tardiness and absenteeism but there is no evidence of oral or written notification that his personal accident history was unacceptable or could endanger his continued employment. In the absence of such warnings we are compelled to conclude that the ultimate penalty of termination was too severe in this case. Accordingly we shall sustain the claim to the extent of reinstating Claimant to his employment without back pay but with other rights unimpaired, on condition that he first undergo a full medical examination by Carrier. Further, Claimant is hereby placed on notice that his job is in peril and he is subject to termination if he does not cease his careless work habits and disregard of safety rules.

FINDINGS:

Public Law Board No. 1926, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was violated.

AWARD

The claim is sustained to the extent indicated in the Opinion.

Dana E. Eischen, Chairman

T. Firriolo, Employee Member

R. E. Peterson, Carrier Member

Dated: September 2, 1977