

PUBLIC LAW BOARD NO. 2366

DOCKET NO. 48

AWARD NO. 36

PARTIES TO DISPUTE:

Illinois Central Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of W. R. Bailey for allegedly being accident prone was without just and sufficient cause and on the basis of unproven and disproven charges..."
- (2) W. R. Bailey shall be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

The Claimant was notified of an Investigation concerning his activities during the preceding nine (9) months which culminated in an accident on December 9, 1980 which, the Carrier asserted, demonstrated a propensity to be accident-prone. Subsequent to the Investigation the Carrier terminated the Claimant's services because he was found by his actions during the stated nine (9)-month period to be accident-prone. The record indicates that the Claimant sustained five (5) personal injuries in less than nine (9) months which resulted in a loss of twenty-one (21) days and twelve (12) days of light duty. The record summarizes those particular injuries and it contains certain percentages of accidents as contrasted to the average accidents per employee. Further, the Carrier asserts that the Claimant admitted a tendency to sustain injury on the job in certain situations where injury should not have occurred and that there is nothing of record which would indicate that he would improve his safety performance.

The Carrier has also cited various Awards in which, Neutral Referees have held that it is appropriate - especially in this type of an industry - to terminate the services of unfortunate individuals who are accident-prone and whose past

performances have indicated no real likelihood of substantial improvement.

The Claimant's appraisal of his particular problem is interesting to consider:

- "Q. Mr. Bailey, let me ask you, do you feel that you are injury-prone?
- A. I've got to admit I'm not the luckiest person that ever lived, but I guess that I don't get hurt no worse than anybody else. I don't feel I do, it's just that I guess that I'm in the wrong spot at the wrong time.
- Q. Well how would you account for your injury record as it pertains to the average person working in a similar occupation?
- A. I don't think that I'm any worse than the average person, it's just that I don't know. The last nine months I was in the wrong place at the wrong time. The first six months that I worked, I wasn't injured once. Yes I was, I'll take that back. I burned my arm on a muffler, but I never reported it. It wasn't nothing bad."

The Organization takes the position that the Carrier has failed to show that the accidents were not unavoidable nor has the Carrier demonstrated any negligence on the part of the Employee. The Organization then attempted to point out a basic reason for the various accidents.

Our attention has been invited to the Decision of this Referee in Third Division Award 22130 in which the Employee was restored to service due to an absence of any prior warnings or progressive discipline and the ultimate conclusion that the penalty of termination was too severe.

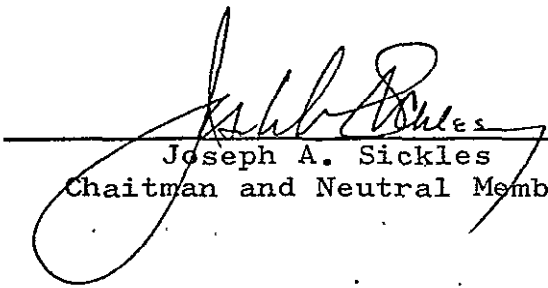
The Carrier points out that this Employee's incidents were compacted into a much shorter period of time than the circumstances considered in Award 22130 and that this is not a "progressive discipline" type of situation.

This Board does not feel that the circumstances of Third Division Award 22130 are analogous to this case because we are dealing with a much different history of accidents in a much more compact period of time and the record does indicate to us that there were warnings given to this Employee concerning his accidents and thus we do not feel that Third Division Award 22130 controls.


AWARD

1. Claim sustained to the extent that the Board upholds a five (5) day suspension.


2. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



DATE