

PUBLIC LAW BOARD NO. 2444

Award No. 72

Case No. 86

Docket No. MW-81-166

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMWE and T. R. McKnight for reinstatement to his former position with pay for all time lost, seniority rights, vacation rights and all other rights unimpaired and his record cleared of all charges, alleging unjustly dismissed.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 19, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Laborer was advised, under date of August 7, 1981, by his Superintendent, in part pertinent, as follows:

"Reference is made to the incident which took place at approximately 11:20 am on August 7, 1981, when you reported a strained groin, your twelfth personal injury since you were employed on July 3, 1978. This includes two lost time injuries in 1980.

You are in direct violation of Rules M and 801 of the General Rules and Regulations under which we all are expected to work while employed at the Wood Preserving Works.

Records indicate that you were given a personal letter on October 4, 1978 outlining your responsibility to these General Rules, and included were Rules M and Rule 801.

Rule M states, in part, 'Carelessness by employees will not be condoned and they must exercise care to avoid injury to themselves and others...'

Rule 801 states, in part, 'Employees will not be retained in the service who are careless of the safety of themselves or others...'

Records indicate that you were given a personal letter on November 20, 1978 for violation of Rule 801 on November 17, 1978.

Records indicate that you were given a personal letter on February 2, 1979 concerning your poor performance as far as excessive personal injuries sustained by you which was a violation of Rule M and Rule 801.

Records indicate that you were given a personal letter on March 13, 1979 for repeated violations of Rule 801.

Records indicate that you were dismissed from service of the Company on September 18, 1979 for continued violation of Rule 801.

Records indicate that you were reinstated to the service of the Company on a leniency basis, without pay for time lost, but without all other rights unimpaired on September 26, 1979, with your verbal assurance that we could expect a better individual safety performance on your part.

Records indicate that you were given a personal letter on October 23, 1979 after your personal injury on October 22, 1979, again informing you of your gross personal negligence and continued violation of Rule M and Rule 801.

Records indicate that you were given another personal letter on November 7, 1980 as a result of violation of Rule 801 on November 6, 1980.

Records indicate that you were suspended for fourteen days, without pay for time lost, on November 26, 1980 for continued violation of Rules M and 801.

Records indicate that, on the date of your employment on July 3, 1978 until the present time, and after repeated counselling sessions, you have now sustained twelve (12) personal injuries directly attributable to your personal negligence which is contrary to Rule M and Rule 801 of Southern Pacific Transportation Company's General Rules and Regulations. A listing of the dates of your injuries is as follows:

August 30, 1978 - bruised middle finger  
September 13, 1978 - bruised left forearm  
November 21, 1978 - low back pain  
January 31, 1979 - minor contusion right hand  
May 8, 1979 - strained lower back  
June 28, 1979 - laceration to upper lip  
August 23, 1979 - insect sting  
September 17, 1979 - pain in right wrist and arm  
October 22, 1979 - bruised right arm  
June 26, 1980 - bruised right knee  
November 17, 1980 - low back strain  
August 7, 1981 - strained groin

Because of your continued violation of Rules M and 801 whereby you have routinely exhibited carelessness in act and attitude towards your personal safety, and, as a result, you have sustained twelve (12) personal injuries since you were employed on July 3, 1978 with no apparent effort on your part to improve your attitude or performance towards your personal safety, you are hereby dismissed from the service of the Company effective to date..."

A formal investigation was requested, granted and finally held on September 16, 1981. Claimant was advised, under date of September 25, 1981 that as a result of the September 16th hearing the charges were sustained.

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule. We find no error so egregious as to require a reversal of the discipline. Carrier's Chief Medical Officer, Dr. Hyder, testified as to his medical discussions with the medical doctor (Dr. Charles Wolfe) who had attended Claimant. Dr. Wolfe works for Dr. Hyder. While such may be hearsay, its admission was not


error. The nature of his testimony was to reflect both what the medical records showed and what Dr. Wolfe found, which was contrary to the alleged injury asserted by Claimant.

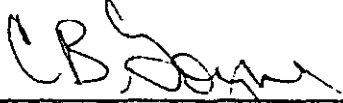
There was sufficient evidence adduced, including the admissions by Claimant, to support the conclusions reached by Carrier. Clearly Claimant in his short employment period of three years had incurred and/or reported an inordinate number of accidents and injuries.

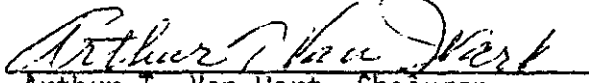
The Board in cases of this nature must be most cautious and diligent and each case must stand on its own record. Carrier's determination of Claimant's service record can not be branded as being unreasonable, capricious or arbitrary. The number of injuries received and/or reported by Claimant, to wit- twelve in three years, six of which resulted in lost time, and the fact that he had been personally counselled thereon and given a personal letter outlining each injury, would indicate responsibility therefor. All of such reported injuries did not of course involve lost time. They resulted from the Carrier's requirement that such be reported no matter how trivial. Admittedly, this requirement creates a dilemma when the number is weighed on a cumulative basis. Such was not shown here. Apparently, the personal letters and discipline assessed Claimant had not been appealed and found to have been wrong on Carrier's part. Consequently, in such limited circumstances the Board will deny the instant claim.

The pattern of Claimant's injuries reflect that his conduct as an employee is such as to be considered careless if not indeed negligent. The Board finds no cause in the record to substitute its judgment for that of Carrier. To continue Claimant in service would create a potential hazard not only for himself but also for his fellow employees as well as a potential liability for the Carrier. The Board will deny this claim.

Award: Claim denied.

  
M. A. Christie, Employee Member

  
C. B. Goyne, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued March 14, 1983.