

PUBLIC LAW BOARD NO. 4108

Award No. 2

Case No. 2

PARTIES TO DISPUTE:

United Transportation Union

and

Illinois Central Gulf Railroad

Statement of Claim

Claim of Chicago Terminal Yardman A. T. Washington, for reinstatement to the service with full seniority rights unimpaired and pay for all time lost, account being unjustly and unfairly dismissed from the service for his alleged violation of Operating Department Rules M, 103(b), 840, paragraph 1, Illinois Central Gulf Railroad Bulletin Notice, Reissue Northern Division dated January 1, 1984 and Safety Rules A, C, D, F and I, and allegedly being accident prone, following investigation held November 13, 1984.

Findings

Claimant was injured when he was struck on the head by a caboose. He told Engine Foreman Turley about the incident. Engine Foreman Turley noted a small amount of blood and suggested that Claimant report the incident. Claimant continued to work to the end of his shift and then went home without reporting the accident. Later that night he began to have headaches and the following morning he went to a doctor who sent him to South

Suburban Hospital for treatment. At this point he informed the Carrier of the injury. The following day, November 7, 1984, Claimant received a letter instructing him to attend a formal investigation to develop facts regarding the incident and to determine not only whether Claimant had properly reported the injury, but also whether Claimant was accident prone.

Claimant does not dispute the fact that he was injured or that he failed to report the accident before going off duty. However, he contends that he was not afforded a fair hearing and that the Carrier's conclusion that he is accident prone is not based on supportable facts.

Discharge for failure to report an injury (which is reported the next day) could be a self-defeating penalty. Accordingly, the Board must conclude that it was the alleged accident proneness of Claimant that was the crucial ingredient in the Carrier's decision to discharge Claimant.

The Carrier indicated that Claimant had a much higher injury rate than other employees with the same seniority. The Organization countered this argument with the comment that not all of the employees so compared were engaged in the same type of work as Claimant, and that four of them were in commuter service which involved much less chance of injury than yard work.

The Board is persuaded that the sample that Carrier used is biased and that if the employee mentioned by the Organization

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were excluded, Claimant's injury rate would be higher, but not beyond reason in relation to his fellow workers.

The Carrier, where attempting to prove that an individual is accident prone, should compare similar individuals. First Division Award 20438 noted:

...(A)n accident prone employee is one who has demonstrated a propensity to get hurt in performing service in his occupation under conditions where successive injuries could have been avoided if the employee had exercised more care of foresight, or had possessed better physical or mental traits, such as faster reflexes and better neuro-muscular coordinations. Evidence suggesting accident-proneness would include a rate of accident frequency and/or severity that is significantly higher for said employee than the rates which in the light of past experience might reasonably be expected of him.

The Board concludes that in this case the Carrier has failed to prove accident proneness and accordingly, the Board will return the Claimant to service. However, since the Claimant did fail to report an injury, he shall receive a suspension appropriate for that failure. Since Claimant has attended a Remedial Safety Training Class in March of 1984, it appears that a six month suspension is appropriate. The suspension is to be made applicable from the date that Claimant was physically able to return to work. Claimant is entitled to be paid for time lost, if any, from six months after the date he was declared fit for work until he is returned to service with all his rights unimpaired.

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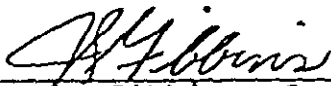
... The claim is disposed of in accordance with the findings and the Carrier is directed to make this Award effective within thirty (30) days of the date of issuance shown below.



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Robert. O. Harris, Neutral Member

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H. Durward Masters, Employee Member

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J. S. Gibbins, Carrier Member