

CSXT FILE: 4(94-1536)  
ORGANIZATION CASE: HNC-4148

PUBLIC LAW BOARD NO. 5786

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION	)	
	)	
VS	)	NMB CASE NO. 1
	)	AWARD NO. 1
CSX TRANSPORTATION, INC.	)	
(FORMERLY CHESAPEAKE & OHIO	)	
RAILWAY COMPANY PM/HV)	)	

STATEMENT OF CLAIM:

Appeal claim of Brakeman M. F. Dumas-075151 for reinstatement of seniority, unimpaired, that his record be cleared of the event and he be compensated for all lost earnings in accordance with Article 11 of the governing agreement, account dismissal from service of the Carrier, as a result of an investigation held in Walbridge, Ohio at 1200 hours on Tuesday, June 7, 1994.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

For the record we should here note that the former Chairman and Neutral Member of this Public Law Board rendered an interim award under date of April 11, 1996, reading in part as follows:

"Brakeman M. F. Dumas shall be reinstated to his former position with seniority and all other rights unimpaired."

with the understanding that the resolution of all other issues, including the claim for back pay would be dealt with when the entire award was issued.

Claimant in this dispute was last employed by Carrier on October 23, 1969 and at the time of this incident had accumulated approximately 25 years of service.

Under date of June 2, 1994, a letter, reading as follows, was sent to this claimant:

"You are charged with being accident and injury prone in that you have sustained eight (8) on-duty personal injuries since April 9, 1974. The dates of the injuries are listed below:

April 9, 1974  
May 25, 1975  
November 15, 1975  
September 14, 1981  
September 21, 1988  
August 25, 1990  
October 14, 1993  
May 19, 1994

"You are instructed to attend investigation to convene immediately following the investigation previously scheduled on June 7, 1994 at 1000 hours in the Conference Room, Administration Building, 239 West Union Street, Walbridge, Ohio. You will be withheld from service pending the outcome of this investigation.

"You are responsible for arranging for a representative and any witnesses you may desire."

The investigation was held as scheduled and as a result thereof Carrier notified claimant, under date of June 15, 1994, of its decision to dismiss him from service.

This Board has closely examined the record in this case and we note that during claimant's years of service he did report having suffered personal on-duty injury on eight separate occasions, however, most of the injuries were minor in nature and resulted in little or no lost time.

The submissions of the parties have directed our attention to the fact that there are two recent awards rendered on this Carrier involving the issue of "Accident Prone." Award No. 32 of Public Law Board No. 4833 was rendered on December 9, 1992 and Award No. 1 of Public Law Board No. 5471 was rendered on January 19, 1994.

In both of the cited awards it was held that "before an employee could be discharged on such charge, there had to be a review of all the evidence and documentation surrounding the employee's accident record. The Boards then went on to find that in those cases there was no such review in that the Carrier officer who introduced the summary of the claimant's accident record at the investigation testified he had no personal knowledge of the reported incidents.

In light of the findings in both of the prior awards above referred to, it is difficult to understand the action here in June of 1994 where Carrier finds an employee to be "accident prone" when the record is explicitly clear that the Carrier officer who introduced claimant's accident record at the investigation freely admitted that he had no personal knowledge of the reported injuries.

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Based on the record here in its entirety, this Board is unable to find that the reporting of eight on-duty injuries, during a career that spanned 25 years, warrants a finding that claimant is accident prone and thereby subject to dismissal from service.

Under the circumstances we must hold that Carrier erred in its decision to dismiss claimant from service and that claimant, who was reinstated to service by the above referenced interim decision, shall now have the dismissal notation removed from his personal record and be paid for all time lost.

AWARD

Claim sustained. Carrier is instructed to comply with this Award within 30 days of the date hereof.

  
F. T. Lynch, Neutral Chairman

  
Lloyd F. Keil, Jr., Carrier Member

  
Robert W. Earley, Employee Member

Award date 11-6-96