

PUBLIC LAW BOARD NO. 2570

PARTIES) CONSOLIDATED RAIL CORPORATION
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Request that discipline by dismissal imposed upon Trainman R. D. Oliver as a result of the following charges be rescinded, expunged from his record and he be restored to service with seniority and vacation rights unimpaired and that he be compensated for all time and expenses incurred inclusive of Health and Welfare premiums in connection therewith:

"Your responsibility in sustaining a personal injury to yourself while working as an assigned brakeman on XR1-B burning your left palm while lighting a fussee and spraining your left ankle in vicinity of Stadium about 1:20 a.m., June 27, 1981. In violation of Conrail Safety Rules No. 1602(a)(b)(c), No. 1700 (d) (k). And a review of your past injuries: December 19, 1978 - bruised left arm from shoulder to hand (tripped on debris). April 9, 1979 - pain in right ear (struck by tree branch). July 27, 1979 - sprained left ankle (stepped in hole). October 21, 1979 - sprained back (throwing switch). September 3, 1980 - cut on forehead (mail). May 19, 1981 - sprained left ankle (ballast and ties)."

FINDINGS: This Public Law Board No. 2570 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was employed in 1978. By a letter dated June 30, 1981 the claimant was notified to appear for a trial on July 3, 1981. The trial date was postponed by mutual agreement to August 11, 1981. The claimant was late for the trial and the trial was held in absentia.

Pursuant to the trial the claimant was found guilty and was dismissed from the service of the Carrier. The claimant appealed the decision to the Manager of Labor Relations, and a hearing was held on September 5, 1981. Thereafter the appeal was denied.

The Organization contends that the evidence does not sustain a justification for dismissal. In this connection the Organization alleges that the claimant sustained a personal injury through no fault of his own. The Organization points up that the evidence does not support a finding that the claimant violated the rules of the Carrier.

The Organization contends that the word of one witness is insufficient to make a finding that the claimant was guilty. The Organization also contends that the claimant's right to due process was denied because the Carrier refused a postponement when the claimant failed to appear. The Organization has cited several awards in support of its position.

The Carrier points up that the trial was set for August 11, 1981 by agreement and that the claimant did not appear, and after waiting a period of two hours, the Carrier held the trial in absentia. The Carrier contends that the claimant was found guilty of violating Carrier Safety Rules 1602, Paragraphs A, B and C, and 1702, Paragraphs D and K.

The Carrier contends that the testimony of Trainmaster Collins establishes that the claimant was guilty of the charges. Trainmaster Collins testified that he received a call from Stadium Tower advising that a member of the crew had been hurt, and he proceeded to that location. He testified that the conductor advised him that one of the brakemen, R. D. Oliver, had burned his hand lighting a fussee.

Trainmaster Collins testified that the claimant came over and showed a small blister approximately the size of a quarter on his left palm and stated he had light a fussee in the proximity of Stadium Tower and claimed he had burned his hand in lighting the fussee and fell back and hurt his ankle.

Trainmaster Collins then testified that he asked the claimant why he had used the fussee, and the claimant answered because the train slowed down. He testified that at this point the conductor stated that he could not understand why the claimant had used a fussee.

Trainmaster Collins also testified that at this time he instructed the claimant to get in the car, and the claimant grew extremely loud and belligerent and disruptive and demanded that an ambulance be obtained for him.

The trainmaster then testified that on the way to the hospital he visually demonstrated to the claimant an incorrect way to light a fussee and asked the claimant if that was how he had lit it, and the claimant said: "Yes, just like that." He testified that he then lit one properly and asked the claimant if he didn't light it in that manner, and the claimant said: "No, I did it like the first one you showed me."


The trainmaster testified that the claimant continued to be extremely difficult and received no treatment for his alleged ankle sprain and insisted upon driving his own car home instead of using a cab provided by the Company.

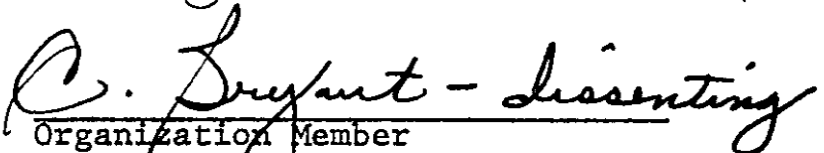
The trainmaster testified that he proceeded to South Philadelphia and made a complete examination of the caboose where the claimant had allegedly sustained his injuries and determined there were no obstructions or defects in standard equipment which would insure proper foot hold and stability.


The evidence of record establishes that this is the third time within a two year period during which the claimant allegedly sustained a sprain of the same ankle and the seventh injury in the claimant's three year tenure with the Carrier. In that period of time the claimant has been paid \$51,450.00, in settlement of injury claims by the Carrier.

After reviewing all of the facts and circumstances herein, the Board finds that there is sufficient evidence for the Carrier to make a finding that the claimant was guilty of the charges. The Board therefore finds there is no justification for overruling the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


C. Bryant - Dissenting
Organization Member


L. F. Welch
Carrier Member

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