

PUBLIC LAW BOARD NO. 2947

AWARD NO. 3

CONSOLIDATED RAIL CORPORATION

VS.

UNITED TRANSPORTATION UNION (T)

STATEMENT OF CLAIM: Please consider this our appeal on behalf of Brakeman F. B. MacGregor who was assessed the discipline of 'Dismissed in all capacities from the service of Consolidated Rail Corporation' for an alleged violation of 'your responsibility, if any, in connection with your alleged injury on Wednesday, April 2, 1981, Rule 1304 (a) of Conrail Safety Rules S7A may apply' as the result of an investigation held April 10, 1981 at Selkirk, N.Y. This appeal is to expunge Mr. MacGregor's record and for compensation for all lost time including fringe benefits from the time he was removed from service until such time as he is restored to service. This appeal is not to be construed as an appeal for leniency.

FINDINGS: On April 3, 1981, carrier posted to claimant at his residence address by certified mail notice to attend an investigation scheduled for April 10 for the following stated purpose "to develop the facts and determine responsibility, if any, in connection with alleged injury Wednesday, April 2, 1981, at approximately 2:30AM, at the east end of Selkirk Yard. Rule 1304 (a) of Conrail Safety Rules S7A may apply. . . "

The cited rule reads as follows:

Rule 1304 (a):

"1304. Expect equipment to move on any track in any direction at any time. Therefore, employees must look in both directions before:

(a) Fouling or crossing track."

On the same day that the notice was posted claimant was also notified of the impending investigation by telephone. The investigation was held as scheduled, and at such investigation claimant and his representative challenged the sufficiency of the notice since claimant had failed to receipt for the certified letter mailed to him. In argument before this board the organization continues to challenge the sufficiency of the notice. This challenge is without merit. The written notice was properly posted, and an employee cannot escape responsibility by simply failing to accept mail. Furthermore, it is certain that claimant understood the purpose of the investigation.

The transcript of such investigation contains clear and convincing proof that claimant was culpable as charged. Claimant failed to keep the proper lookout for the moving engine, and his injury was proximately caused by his own negligence.

Claimant's culpability was established in an investigation which was conducted in an impartial and proper manner. The record is free of substantive or procedural error.

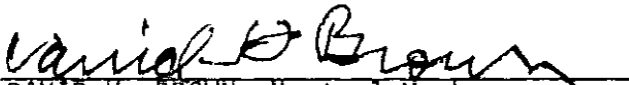
In assessing discipline, carrier considered claimant's prior discipline and safety record which reads as follows:

"February 8, 1977, bruised left foot,
February 11, 1977, fracture left 5th rib
mild contusions,
April 13, 1979, ruptured muscle left calf
off duty, lost time
October 7, 1979, bruised and sore lower
middle back
July 2, 1980, laceration bruised swollen
right forearm - bruised left hip.
Discipline: Individual responsibility in connection
with the personal injury at #1 Receiving Yard Selkirk
while member of B&A light crew, register 2:45AM failure
to properly report same - safety rules involved: 1000(B)

Conrail S7A Rule R. Par. 1 and 3 Conrail Rule of the Transportation Department and Safety Rules 1700(A, B & D). Safety Rule 1702 (a) 1705 (D) S7A 7/2/80 out of service and time attending investigation to apply as actual discipline. 10/8/80 ten days actual suspension violation of Rule T Conrail Rules of the Transportation Department absent from duty since 8/5/80 without proper authority, failure to mark up or acquire form MD40 request for medical service so as to obtain return to work physical after absence due to injury sustained on 7/2/80 and release from Mr. Constantine and determined able to return to work on 8/5/80. 11/5/80 discipline modified to 10 days suspended suspension."

The record reflects that claimant is accident-prone to such a degree that we find the carrier was justified in separating claimant from its service, this for the good not only of claimant but also his fellow employees.

AWARD: Claim denied.


DAVID H. BROWN, Neutral Member


G. R. WELSH, Carrier Member


E. F. LYDEN, Organization Member

APR 8 1983