

PUBLIC LAW BOARD NO. 3514

Case No. 101 Award No. 99

PARTIES Brotherhood of Maintenance of Way Employees
to and
DISPUTE: Consolidated Rail Corporation

STATEMENT OF CLAIM: Appeal of Welder Francisco Vargas to have his dismissal removed from the records and to be restored to the service.

FINDINGS: The case before us arose after the Carrier Concluded, subsequent to an investigation, that the Claimant was accident prone. The Carrier found that the Claimant did not exercise due care and caution when he injured himself on September 14, 1984. It then reviewed the Claimant's past injury record and concluded that his injury frequency rate was in excess of other employees with comparable seniority and work.

The Organization, as it progressed this appeal and before the Board, argued vigorously that the Claimant had been prejudged.- It asserts that the Carrier improperly allowed certain testimony to be introduced, did not specify the exact offense for which the Claimant was charged, and untimely charged him with prior injuries.

With respect to the Organization's due process assertion, from the record before us, we find that the Claimant's rights have not been prejudiced in these proceedings.

Turning to the merits, there is substantial evidence to support the Carrier's findings that the Claimant's failure to use proper care on September 14, 1984 resulted in his injury that date. Given

the total record, we have no basis to find out the Carrier mis-used its discretion.

AWARD

The claim is denied.

F. J. Domzalski
F. J. Domzalski
Carrier Member

Eckehard Muessig
Eckehard Muessig
Neutral Member

V. P. Cassese
V. P. Cassese
Employee Member

Dated: FEB 27 1988