

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION	*	
"CARRIER"	*	
	*	
-and-	*	CASE NO. 15
	*	
BROTHERHOOD OF MAINTENANCE OF	*	AWARD NO. 13
WAY EMPLOYEES	*	
	*	
"ORGANIZATION"	*	
	*	
	*	

STATEMENT OF CLAIM

Claim of the Brotherhood (CR-1377-D) that:

- (a) The Carrier violated Rule 29 of the current Scheduled Agreement when disciplining the Claimant, B&B Mechanic W.E. Oudinot, in an arbitrary and capricious manner.
- (b) The Claimant shall be exonerated of the charges and compensated for all lost wages, including overtime, and any lost benefits resulting from this disciplinary action shall be restored.

This claim arose when the Carrier charged W.E. Oudinot, hereinafter the Claimant, with violating Carrier Safety Rules and being accident prone. The specific charge, contained in a notice February 7, 1985, was as follows:

"Being accident prone in that you had forty (40) personal injuries during the period September 30, 1948 to January 21, 1985, the date of your latest injury, which you reported to E.J. Peterson, B&B Supervisor at approximately 8:00 AM, January 22, 1985 at Harrisburg, PA.

Violation General Rule 5 of S-7-C, Conrail Safety Rules for the Maintenance of Way Employees, which resulted in your personal injury on January 21, 1985."

General Rule 5 of S-7-C of Carrier Safety Rules for Maintenance of Way Employees states as follows:

When handling windows, doors, drawers, covers, lids or other hinged devices, use handles or knobs provided and be certain that the device is properly secured before placing any portion of your body into the opening. Do not open more than one filing or tool cabinet drawer at a time. Close all devices carefully, as soon as the purpose for which it was opened is ended. Avoid pinch points.

The hearing was held on February 21, 1985. The Claimant was present and represented by the Organization. By notice dated March 4, 1985, the Carrier notified the Claimant that he had been found guilty of the charges and assessed discipline of discharge. A claim was then filed on behalf of the Claimant.

By letter dated November 1, 1985, the Carrier stated that the Claimant "shall be restored to service solely on a leniency basis, with all time held out of service to apply as discipline." The Claimant was restored to service on November 25, 1985. By letter dated December 2, 1985, the Organization notified the Carrier that it would proceed forward with the claim to "press for all monetary loss, credits, benefits and fringes."

This Board heard oral argument concerning the claim on

February 13, 1986. The Claimant was notified of the Board meeting by certified mail, but did not attend.

The Claimant, a B&B Mechanic, entered the Carrier's service in 1948. On January 21, 1985, the date of the incident giving rise to this claim, the Claimant suffered an on-duty injury. While the Claimant was attempting to close the door of a bunk car, the wind closed the door in his face. The hinge of the door started swinging and hit the Grievant in his face, causing a laceration above his left eye. In compliance with Carrier rules, the Claimant promptly reported the injury. It did not cause the Claimant to miss any work.

POSITIONS OF THE PARTIES

The Carrier maintains that the record contains substantial evidence establishing the Claimant's guilt of both charges. The Claimant has reported 40 injuries during his employment with the Carrier, far more than other similarly situated employees. Other Boards have held that accident proneness is a valid charge that may be disciplined by discharge. Moreover, the claim should not be before the Board, as the Claimant was reinstated based on leniency.

The Organization asserts that there is insufficient evidence to support either charge. The Claimant received discriminatory treatment, as he was disciplined for properly reporting his injury of January 21, 1985, while a foreman who testified he did the same thing that caused the Claimant's injury was not disciplined. Furthermore, the Claimant did not receive a fair and impartial hearing. The Carrier improperly considered the Claimant's medical reports, dating back to 1948, in an attempt to find him "accident prone."

Finally, the claim is properly before the Board, as the Organization never accepted leniency as a basis for the Claimant's reinstatement.

OPINION OF THE BOARD

The claim shall be denied. The record contains substantial evidence to support the Carrier's finding of the Claimant's guilt. On January 21, 1985, the Claimant violated General Rule 5 of S-7-C, Conrail Safety Rules, which resulted in his personal injury. The Claimant was not treated discriminatorily, as there is no evidence that the foreman or any other employee injured themselves while opening the door. The record also contains substantial statistical evidence that the Claimant is "accident prone," as he has sustained an inordinate amount of injuries over the years when compared to other employees with similar seniority. Precedent exists in the railroad industry for finding "accident proneness" to be a legitimate charge. As the Claimant was returned to service in November, 1985, the Board shall not set aside the discipline imposed.

AWARD

Claim denied.

S.E. BUCHHEIT 3-5-86
S.E. BUCHHEIT
Neutral Member

R. O'NEILL
Carrier Member

J.P. CASSESE 3-6-86
J.P. CASSESE
Organization Member