

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 4410

AWARD NO. 10

Case No. 59

Docket No. CR-3738

Referee Fred Blackwell

Carrier Members: R. O'Neill
F. C. Kublic

Labor Members: A. J. Lese
J. L. Parry

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION/BROTHERHOOD OF RAILWAY CARMEN

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Appeal of C. Mahurin, Jr., Avon, IN. Dismissed in all capacities by Notice of Discipline dated April 21, 1987 for violation of Safety Rules 4000 and 4155 being accident prone and failing to conduct himself to avoid personal injury.

FINDINGS:

Upon the whole record and all the evidence, after November 2, 1987 hearing in the Carrier's Office, Philadelphia, Pennsylvania, at which the Claimant was present, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

This case arises from the Claimant's appeal and protest of the Carrier's action of dismissing him from his employment with the Carrier on the grounds hereinafter indicated.

The record reflects that the Claimant attended an inves-

tigative hearing on April 6, 1987, in which he was subject to the following charges:

"CHARGE #1: Violation of Safety Rules 4000, 4155 (c), (d), (f), (g), of the Conrail Safety Rules for Maintenance of Equipment Employees, S 7-D, during your tour of duty, 6:00 AM to 3:00 PM on 1-21-87, as carman at Duane Yard, Terre Haute, Indiana, when you:

- A. Failed to inform your immediate Supervisor of the injury until the following day.
- B. Failed to lift only within limits of physical capabilities.
- C. Failed to obtain help to handle heavy or unwieldy object.
- D. Failed to bend knees and keep back as erect as possible.
- E. Failed to grip object firmly at most suitable point and slowly straighten legs, avoiding violent pulls or jerks.

CHARGE #2: A. Being accident prone, and

- B. Failing to conduct yourself in the performance of your duties in such a manner as to avoid personal injury, unduly increasing such risk to yourself and others, thereby establishing yourself as an unsafe and unsatisfactory employee as is evidenced by ten (10) personal injury accidents since your employment on 6/19/74 as follows:

- 1. 9-17-76 Puncture to right foot.
- 2. 1-23-79 Bottom lip cut.
- 3. 9-22-81 Mashed ring finger on left hand.
- 4. 3-25-82 Bruised right side of head.
- 5. 8-26-82 Laceration of left thumb.
- 6. 12-12-83 Burn inside left ear.
- 7. 5-11-84 Foreign object in right eye.
- 8. 8-01-84 Right ankle fractured.
- 9. 10-25-85 Sprained wrist.
- 10. 1-21-87 Back sprain."

Following the hearing the Carrier concluded that the hearing evidence established the Claimant's guilt of the infractions referenced in the charge, whereupon, on April 21, 1987, the

Carrier instituted the dismissal action against the Claimant which is the subject of the herein appeal.

The Carrier's hearing evidence established that on January 21, 1987, at 9:45 A.M., the Claimant Carman suffered a back injury while lifting a copy machine onto the back of a pick-up truck. The Claimant did not report the injury to the Carrier until January 22, 1987 at 8:35 A.M., approximately twenty-three (23) hours later. As a result of the incident, the Carrier reviewed the Claimant's record of work injuries since his hire date in June 1974, and concluded that his injury rate was excessive and that he was accident-prone. In this regard General Car Foreman B. L. Vermillion testified that the Claimant's record reflected ten (10) personal injuries in less than thirteen (13) years of service which was well above the accident rate of other Carman on his seniority roster and that the Claimant had been counseled on his personal injury record in May of 1986.

After due study of the foregoing and of the record as a whole, inclusive of the submissions of the parties in support of their respective positions in the case, the Board concludes and finds that there are no procedural irregularities or due process defects which preclude Board consideration of the merits of the case, or which warrant altering the discipline.

The Board further finds that the record as a whole contains substantial evidence to support the Carrier's findings of the Claimant's guilt of the infraction cited in the charge, and that discipline for the infraction was warranted. The record

shows without question that the Claimant failed to report the accident in question and in addition the Carrier submitted substantial evidence to show that the Claimant's injury rate was excessive. It is well established under prior Board authorities that the Carrier is not required and has no obligation to continue in service a careless employee such as the Claimant who makes himself a potential hazard to himself, his co-workers, and in some instances the public. A comprehensive statement of this principle is found in the following passage in Public Law Board No. 542, Award No. 2 - Chairman Seidenberg:

"The Board finds that the substantive evidence of record supports the Carrier's position. The Claimant admitted that he suffered an injury and failed to make a written report thereof, although he orally informed Yardmaster Michel about this incident. * * * The record also supports a reasonable conclusion that the Claimant had suffered an inordinate large number of personal injuries in his work career which caused him to be absent from work a substantial amount of time. It is not necessary for the Carrier to prove that in each and every incident the Claimant acted negligently. His work record shows a fairly regular and repeated pattern of work injuries, * * * and the Carrier properly concludes that such * * * conduct makes it undesirable, if not dangerous, to continue the Claimant in the employ of the Carrier. * * * the Claimant is an accident-prone employee whose continued

service makes him potential hazard to himself, his fellow employees and the Carrier. The Board * * * has no recourse but to deny the claim."

The Board further finds that the quantum of discipline assessed by the Carrier was reasonable and not arbitrary in light of the infractions established by the evidence, and that there are no mitigating circumstances or other considerations which warrant modification of the discipline.

In view of the foregoing, and based on the record as a whole, the claim will be denied.

AWARD:

Claim denied.

BY ORDER OF PUBLIC LAW BOARD NO. 4410.

Fred Blackwell

Fred Blackwell, Neutral Member

R. O'Neill, Carrier Member

A. J. Lese, Union Member

F. C. Kublic, Carrier Member

J. D. Parry, Union Member

Executed on February 26, 1988.

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20. The Executive branch
of the great majority
of the claimant states
was bound in matters
and should have been
involved against him.
very satisfactory in
the case of the British
resorters some, &c. &c.