Org. File 91-61-760
Co. File 011-181 (H)

DECISION No. 4714
CASE No. 2-UTU(C) (Conductors)
Supplemental List No. 42

SPECIAL ADJUSTMENT BOARD NO. 18
(Train and Yard Service Panel)

PARTIES TO DISPUTE: United Transportation Union (Conductors-Trainmen)
Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: Carrier violated the current Agreement when it preferred a charge of accident-proneness, as detailed in its notice of February 10, 1969, against Conductor F. A. Holman, Oregon Division.

STATEMENT OF FACTS: The factual situation giving rise to the claim is sufficiently detailed in the body of the Award to obviate the necessity for duplication here. The Board has appraised the entire record and reaches the following result:

DECISION: Claimant was discharged for "accident-proneness" based upon a statistical showing that he had been involved in 16 accidents in the course of his employment career with this carrier between March 1951 and December 1968.

The charge of "accident proneness" as grounds for discharge, while not unheard of by any means, is nevertheless relatively unusual and raises interesting questions which deserve careful consideration.

It must be emphasized at the outset that the carrier in this case has not seen fit to charge claimant with negligence or responsibility for any of the 16 accidents in which he was involved. The carrier rests its case solely on the proposition that claimant's accident rate is "significantly higher than the average for those similarly situated."

Ordinarily an employe may be discharged under certain circumstances for negligent involvement in a serious accident or for negligent involvement in two or more less serious accidents. In such cases the employe is entitled to a hearing in which the employer must carry the burden of proving that the accident occurred under circumstances such that the employe could have prevented or avoided the accident if he had performed and reacted in the manner expected of an average, reasonable and prudent individual. In the present case, the employer seeks to avoid that burden of proof and to establish a different ground for discharge--discharge without fault for involvement in unexplained accidents more numerous than average.

After a careful study of the subject or concept of "accident-proneness" this arbitrator cannot concur with the idea, loosely articulated in some awards cited by the carrier, to the effect that raw statistics are a satisfactory basis for termination of an individual's employment rights in the absence of any specific proof of fault or negligence.

The fact of the matter is that accident-proneness is a rather complex problem. The Lawyer's Medical Cyclopedia Revised Volume 3 has an entire chapter of 54 pages devoted to the subject and points out that there are physiological, emotional and psychiatric bases for the condition which may be detected and treated by competent medical personnel.

The complicated nature of the problem is well illustrated in a lengthy arbitration decision by an experienced and respected arbitrator in a reported case designated as Northrup Aircraft, Inc., 24 LA 732. In that case, the discharge was properly handled by the employer as a medical discharge, and the decision was based on the informed opinion of a physician experienced in industrial medicine. There was medical evidence for both parties and the arbitrator's opinion refers to the fact that the dispute involved "a highly specialized aspect of industrial psychology."

The claim as asserted in the present case asks for a ruling that the carrier violated the Agreement by preferring a charge of accident proneness. It must be concluded that when the carrier elects to discharge for "accident proneness" as distinguished from negligent responsibility for an accident or accidents, it must handle the matter as a medical discharge based upon competent medical evidence and allow the employe the contractual rights provided to contest any medical discharge.

The claim is disposed of as indicated in the findings above.

Paul D. Hanlon

Paul D. Hanlon, Chairman and
Neutral Member

Geo. E. Perkins, Employe Member

S. E. Bridwell, Carrier Member

San Francisco, California
October 20, 1971