SPECIAL BOARD OF ADJUSTMENT 910

AWARD #54

MEMBERS OF BOARD

E. F. LYDEN
Organization Member

ROBERT O'NEILL
Carrier Member

JUDGE ARTHUR W. SEMPLINER
Chairman and Neutral

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION (T)
CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Appeal from discipline of dismissal assessed employee L. J. Grahn in connection with the charges as outlined below:

"A personal injury sustained by you at Greenwich Yard, South Philadelphia at approximately 1:50 a.m., February 5, 1983, while assigned as Conductor of WPAB 28. In violation of Rule 1300 of Conrail Safety Rules "S7A' and General Notice, Page 1, Rule B of the Rules of the Transportation Department.

Also, a review of your past personal injuries to determine if you are unfit to continue in train service due to being prone to personal injuries.'"

FINDING:

The Board, upon the whole record and all the evidence, finds that:

The Carrier and Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute and the parties involved herein, and the parties were given due notice of hearing.

FINDING:

After investigation held June 24, 1983, claimant was dismissed from the carrier's service. Claimant, at the investigation, was charged with sustaining a personal injury, and with being accident prone. The record contained a list of some twenty injuries received by claimant from 1966 through 1983. On the specific injury of February 5, 1983, when claimant sustained a broken ankle, claimant alleges he stepped on a piece of coke causing him to fall. The carrier claims an inspection of the area by Terminal Superintendent R. F. Vandervort, disclosed no coke on which claimant could fall. The inspection was in the area of the Greenwich Hump, but not identified as the exact spot where the fall occurred.

It has long been a practice in the railroad industry to remove employees who are accident prone. Such employees frequently fail to take the requisite precautions to save themselves from injury. While here claimant statistically had twenty injuries in less than twenty years, the carrier has not provided the necessary groundwork to invoke the rule. There is no showing of carelessness on the part of the claimant, as to any injury, or that the instant injury was caused by his act. There is no showing of any warning to claimant that his injury record was excessive, nor progression of discipline for being careless in his personal safety. Claimant will be restored to duty with pay for time lost.

Arthur W. Sempliner
Judge Arthur W. Sempliner
Chairman and Neutral

E. F. Layden
E. F. Layden
Organization Member

R. O. Noble
Carrier Member
I dissent

DATED: Dec 11, 1984
Philadelphia Pa