

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 910

Case No. 665

Award No. 665

Parties to Dispute

UNITED TRANSPORTATION UNION (T)

and

CONSOLIDATED RAIL CORPORATION

Statement of Claim (Docket No. CRT-9773-D)

TRAINMAN P.E. WATSON - Appeals the decision of the Carrier to dismiss him for violating Rule 1300 of the Safety Rules and Procedures and for being accident prone.

Statement of Facts

Claimant Watson was injured at work on May 20, 1993. The Carrier charged Claimant with having violated Rule 1300 by failing to be alert for tripping and slipping hazards, and it charged Claimant with being accident prone.

Claimant's prior discipline record was as follows:

<u>Date</u>	<u>Charge</u>	<u>Discipline</u>
04/03/79	Responsibility in connection with personal injury of bruised lower right back	10-day Suspension

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04/15/80	Responsibility in connection with personal injury of mashed right middle finger	3-day Suspension
09/17/82	Responsibility in connection with personal injury of strained lower back, adjusting drawbar	Reprimand
07/27/88	Responsibility in connection with personal injury of bruised right elbow, lost grip striking elbow	15-day Suspension, reduced to reprimand on appeal

Claimant's record of reported personal injuries and accidents and the like was as follows:

04/03/79	Bruised lower right back
04/15/80	Mashed right middle finger
09/19/80	Headache, inhaled unknown fumes
03/04/82	Bruised right side, slipped on ice
09/17/82	Strained lower back, adjusting drawbar
12/28/83	Alleged twisted back, slipped-fell on ice
05/11/84	Alleged inhalation of chemical fumes
09/14/84	Headache, alleges inhalation of chemical fumes
09/25/84	Coughing, chest tightness, alleges inhalation of foreign odor

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02/19/85	Sprained right arm attempted to operate spiked switch
08/02/85	Tightness in chest, alleges smelling odor
12/07/85	Pain in back and right leg while setting brake
07/27/88	Bruise right elbow, lost grip striking elbow
05/20/93	Lumbar strain, lifting pin and stepped on side of tie

Findings

The Board finds that the Employee and the Carrier in this dispute are, respectively, Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

The Board also finds that Claimant was accorded a fair and impartial hearing in this matter.

With regard to the charge that Claimant violated Rule 1300 of the Safety Rules and Procedures on May 20, 1993, the Board finds that there was substantial evidence in the record to support this charge. Claimant was not alert to the hazard in the yard that day, and he must reasonably bear responsibility for the resulting injury. With regard to the charge that Claimant was accident prone, however, it must be noted that Claimant had apparently gone for almost five (5) years between bruising his elbow in July, 1988 and suffering this lumbar strain in May, 1993. It must also be noted that Claimant had no suspension on his record for the thirteen (13) years prior to this May, 1993 incident. Against this background the Board finds that even though the Carrier had cause to discipline Claimant on this occasion, the Carrier's decision to impose dismissal constituted excessive discipline. The Board concludes that the Carrier had cause to suspend Claimant for no more than thirty (30) days in this case. The Carrier will be directed to amend its records, and to make Claimant whole, accordingly. The Carrier will further be directed to comply with this award within thirty days of the date below.

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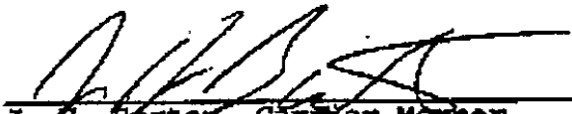
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The claim is sustained to the extent set forth in the Findings.

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David A. Petersen, Neutral Member



J. H. Burton, Carrier Member



R. D. Snyder, Organization Member

Issued this 10th day of October, 1995.