

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32548
Docket No. MW-32981
98-3-96-3-365

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Louisville &
(Nashville Railroad Company - Central & Eastern
(Illinois District)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborer S. S. Baird on March 31, 1995 for alleged responsibility in connection with a personal injury he sustained on January 6, 1995 and for allegedly being injury prone was without just and sufficient cause, unwarranted, on the basis of unproven charges and in violation of the Agreement [Carrier's File 12 (95-0502) CEI].
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with all benefits and seniority rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant entered the Carrier's service on June 29, 1964, and was working as a Laborer at the time of his dismissal.

On January 6, 1995, Claimant, while working in Carrier's Brewer Yard, Danville, Illinois, walked across a frozen puddle covered with snow, slipped and fell, injuring his back. As a result of this accident and 14 prior accidents since 1967, Carrier conducted an investigatory Hearing. After that Hearing, Carrier found Claimant guilty of being accident prone and dismissed him from service. The Organization filed a timely appeal. The parties were unable to settle this dispute on the property.

Carrier contends Claimant was afforded a fair and impartial Hearing; that it obtained sufficient evidence proving the Claimant guilty of being accident prone and assessed the proper level of discipline. The Organization claimed the Investigation was not fair and impartial; that Carrier has no standard for "accident proneness"; that Carrier offered no credible evidence that Claimant was responsible for any of the 15 personal injuries he sustained during his more than 30 years of employment; and Claimant was never charged with a Safety Rule violation for any of his 14 prior accidents. Approximately three years separate the Claimant's two most recent injuries.

The Board finds several flaws in Carrier's case, any one of which, standing alone would be fatal to its case. Carrier did not show that it had investigated any of the 14 prior accidents. Carrier had not found that Claimant caused those accidents by his own carelessness or negligence or that he had violated Safety Rules. Carrier did not provide evidence that it had imposed any form of discipline and/or corrective safety training after any of the prior accidents. Carrier had no articulated standard of accident proneness. Statistical comparison of accident rates of employees are valid only to the extent that such comparisons are made between similar jobs containing similar hazards in similar environmental conditions over similar time periods. Statistical comparisons were not persuasive here.

Form 1
Page 3

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of April 1998.