

Award No. 1304

Docket No. 1223

2-Wab.-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 13, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman Velma Parker was unjustly deprived of his service rights on February 13, 14, 16, 17, and 18, 1948, and that accordingly the carrier be ordered to compensate him for the time lost on said dates.

EMPLOYEES' STATEMENT OF FACTS: Carman Velma Parker, herein-after referred to as the claimant, has been regularly employed by the carrier at its car shop, Decatur, Illinois, since August 4, 1928, and was regularly assigned as an oxyacetylene welder and cutting torch operator from 7 A. M. to 3:30 P. M., with a thirty (30) minute lunch period, six (6) days per week.

On the morning of February 11, 1948, the claimant, during the course of his regular duties, heated a coupler operating pin lifter at A-end of Wabash Car 79619 so it could be repaired or straightened by Carman Walter Goodman. On the same date, at 1:45 P. M., the claimant was required to stand investigation on the alleged charges of disregarding his instructions and not performing his duties as an oxyacetylene operator in a safe and cautious manner which concerned a fire that occurred in Wabash Car 79619, and copy of said charges is submitted, identified as Exhibit A.

The investigation was held as scheduled at 1:45 P. M. on February 11, 1948, and a copy of the transcript record thereof is submitted, identified as Exhibit B. However, immediately upon the conclusion of said investigation the claimant was verbally suspended from service for five (5) days, effective February 13, 14, 16, 17, and 18, 1948, and this is affirmed by copy of the submitted statement made by the claimant, concurred in by the local committee, identified as Exhibit C.

The agreement effective June 1, 1939, as subsequently amended, is controlling, and in accordance therewith this dispute has been handled, with the result that the highest designated carrier officer to whom such matters are subject to appeal has declined to adjust it, as reflected in copy of submitted letter dated March 19, 1948, addressed to the undersigned by Mr. Buck, identified as Exhibit D.

POSITION OF EMPLOYEES: It is respectfully submitted that within the meaning of the provisions of revised Rule 31, captioned "Grievances," in pertinent part reading:

also failing to note the contents of the car before attempting to repair the uncoupling lever by use of the oxy-acetylene torch. Therefore, Mr. Parker did not exercise proper precautions, prior to and while using the torch, with a view to preventing fire damage, as instructed on numerous previous occasions by the foreman.

The carrier further contends the discipline administered in this case is not unreasonable or unjust, but lenient, and applied in the interest of the service, and the contention of the Committee should be dismissed and request denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

Direct evidence is lacking to link Parker with the cause of the fire in Wabash Car 79619. In the first place, it is not suggested that Carman Walter Goodman acted improperly or carelessly when he directed Parker to apply the oxy-acetylene torch to the defective pin lifter. Goodman was the only eye witness to this repair job, and he absolves Parker of any negligence in work performance. Parker finished his task at 10:00 A. M., after which Goodman spent about fifteen minutes installing a couple of brake shoes. The fact that neither of the two men noticed any signs of fire during an interval of about twenty minutes does not harmonize with the claim that the carload of shavings was ignited by the flame from Parker's torch. The fire was not discovered until 11:00 A. M., or about 45 minutes after the car was moved from the shop repair track. The evidence does not shut out the possibility that the fire resulted from some act occurring after the car left the repair track. The circumstances in this case clearly rebut any inference that Parker was responsible for the damage.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1949.