

Award No. 4661

Docket No. 4669

2-K&IT-FO-'65

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O.
(Firemen & Oilers)**

**KENTUCKY AND INDIANA TERMINAL
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Wing Beasley was unjustly removed from the service at Louisville, Kentucky, on May 8, 1963.

2. That accordingly, he is entitled to compensation for all time lost from May 9 through May 22, 1963.

EMPLOYEES' STATEMENT OF FACTS: Wing Beasley, hereinafter called the claimant, is employed by the Kentucky and Indiana Terminal Railroad Company, hereinafter called the carrier, as a Laborer at Louisville, Kentucky. At the time of this dispute, the claimant was 66 years of age, with 26 years of service with the carrier.

The claimant's duties varied from burning trash at the incinerator to blowing up sand, icing cabooses, picking up debris, and other laborer's work assigned by the foreman.

The carrier maintains an incinerator for burning trash which is located at the southeast corner of the stationary boiler-room. A paper bin or trash bin is maintained approximately six feet directly in front of the incinerator. The carrier also permits salvageable paper to be stored near the incinerator.

The carrier does not require an attendant to be at the incinerator while burning debris, but rather to fire the incinerator and then go about their other duties which in this case, included blowing up sand, icing cabooses, picking up paper, cleaning sand around the coal chute and other laborer's work assigned by the foreman.

On April 17, 1963, after emptying the trash bin into the incinerator, the claimant proceeded to fill up the four sand tanks, after which he returned to

tinguishing apparatus is likewise not pertinent to the issue because the matter under investigation dealt with the proper precautions to prevent the fire, not with a test of claimant's ability to put it out once it was started. The adequacy of the K&I's fire protection is best left to the expert inspection of the local fire department and of its insurance carrier.

In reference to the cardboard, it will be remembered that it was around the corner of the powerhouse. In Mr. Abner's letter of May 24, 1963, Carrier's Exhibit 8, he alleges the cardboard was within four or five feet of the incinerator. Mr. Abner's statement of distance is incorrect. The corner is 15 feet from the incinerator, and the heavy 7 foot high wire fence of the bin is between the two. The foregoing physical facts are of significance in this dispute to demonstrate the velocity of the wind necessary to blow sparks 15 feet from the incinerator through a heavy wire fence and around a corner of a building, an unsafe condition known to claimant at the time he left the open fire.

The carrier denies that under normal conditions and reasonable care on behalf of the operator that the cardboard created a fire hazard as alleged in Mr. Abner's letter of May 24, 1963. His admission that the lumber was too long for the firebox supports the carrier's position that claimant should have exercised more care and attention to the incinerator on the date in question.

General Chairman Abner in his undated letter to Mr. Dixon, attempts to minimize the availability of the fire hose located within 40 feet from the incinerator. Regardless of Mr. Abner's statement, employes have operated hoses attached to this hydrant unassisted. Furthermore, almost immediately upon the fire's discovery, there were other employes available to assist claimant with the hose.

However, even if additional firefighting equipment was immediately adjacent to the incinerator, it would not minimize claimant's responsibility in this case, because he, on his own initiative, absented himself from the area. Consequently, he could not have prevented the damage by operating any of the firefighting facilities. Furthermore, claimant admitted that additional fire hose at that location would have been useless in the present case. That part of the testimony reads as follows:

Mr. Abner — "When you arrived at the incinerator after the fire pretty much out of control, with the facilities of fire prevention available, do you think with proper fire hose or other fire fighting equipment available to you, do you think you could properly have controlled it?"

A — "No sir I don't."

CONCLUSION: The carrier has shown through clear and convincing proof that the discipline assessed against claimant in this case was in accordance with the collective bargaining agreement; the evidence supported the charge made against him; and in view of his past record, discipline was administered in a reasonable amount. The claim in this case should be dismissed.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The record shows that the incinerator was against the south side of the building, near its southeast corner, that a mass of paper and cardboard was piled against the east wall of the building, around the corner and just beyond an empty wire paper bin, awaiting removal by another employe, that the incinerator doors would not close tight, and that one of them was necessarily left open because claimant was burning some boards too long to go entirely inside, that the weather was dry, and that a strong wind was blowing from the southwest. The assistant foreman had given him a superior's order that loose paper in another area should be kept picked up; claimant did not understand him to mean that he should immediately leave the incinerator to do so, but he did leave to fill four sand tanks, which also was part of his regular work; on his return about fifteen minutes later he found the paper and the east end of the building ablaze.

After an investigation claimant was discharged from service as of May 9, 1963; but he was reinstated by the carrier on May 22nd with all rights unimpaired, so that the claim involves compensation for only that period.

The organization contends that both the incinerator and the firefighting equipment were inadequate; but if so, those facts were known to claimant, along with the dry and windy weather, and the presence of the piled paper. Therefore he should not have left the incinerator until the boards were burned sufficiently to have been placed entirely in the incinerator and the blaze had died down sufficiently to be left unwatched.

Claimant had been on this work for nearly two years, had heard of former fires in the area, and answered "No" to the question "With the experience of April 17 would you do exactly the same thing you did that date?" He had other duties but should not have left the incinerator until it was safe to do so.

Discipline was not unwarranted, and in view of the record and the damage it cannot be considered unreasonable or excessive.

AWARD. Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.