

Award No. 1116

Docket No. 1062

2-ACL-MA-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L (MACHINISTS)**

**ATLANTIC COAST LINE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That the discipline assessed against T. E. Wilson, machinist, Jacksonville, Florida, effective May 4, 1945, represents unjust treatment within the meaning of Rule 21, third paragraph, of the controlling agreement.

That the carrier be ordered to compensate T. E. Wilson at his established rate of pay for all loss of wages resulting from the aforesaid discipline, made effective May 4, 1945, in the form of thirty (30) days suspension from work.

**EMPLOYEES' STATEMENT OF FACTS:** T. E. Wilson (hereinafter referred to as the claimant) received written notice on date of March 23, 1945, that an investigation would be held in the master mechanic's office at 10:00 A.M. the following day to determine his responsibility in connection with a fire he had allegedly started on Diesel Unit No. 519, on March 22, when using an acetylene cutting torch to remove a 5/8-inch bolt.

The notice of investigation is signed by Mr. J. C. Benson, master mechanic, and disclosed an estimate of the damage done because of the claimant's allegedly unauthorized use of the acetylene torch. It is stated in the notice that the purpose of the investigation would be to bring out why the claimant used a torch in removing the aforesaid bolt instead of using the means he did employ after the fire was extinguished.

The investigation scheduled to be held on March 24 was postponed until March 26 because of the delay in making delivery of the aforesaid notice to the claimant. This is borne out in the record, but not the fact that the claimant is chairman of the machinists' committee at Jacksonville, Florida.

It is further evident from the record that the fire occurred on March 21 and not on March 22 as stated in the notice of investigation.

The investigation accorded the claimant on March 26 was conducted by Mr. J. C. Benson, master mechanic, with Messrs. F. D. Sineath and F. Holland, Diesel foreman and assistant Diesel foreman, respectively, also present.

It was developed at the investigation that the claimant had been assigned to drop the main reservoirs of Diesel Unit No. 519 on March 21 for annual inspection. The difficulty encountered in removing the reservoirs before resorting to use of the acetylene cutting torch is related in the record of investigation.

acetylene torches was not a practice, that extra precautionary measures were always taken when some particular operation was performed on the Diesel unit.

Carrier is showing that notice was extended to Machinist Wilson of investigation to be held for 10:00 A. M., March 24, 1945, as Exhibit B. Also showing notice of date of investigation being postponed as the letter of March 23 was not delivered in time to hold the investigation on March 24 as previously planned, due to the fact that Machinist Wilson had moved and not furnished his new address, and Machinist Wilson did not report for work on the date in question, shown as Exhibit C.

Carrier is showing as Exhibit D, notice of a thirty day suspension given to Machinist Wilson.

Carrier is showing as Exhibit E statement made by Mr. John Acorn, pipe-fitter at Jacksonville, Fla., that "I have certainly had plenty of cooperation from all of the foremen with reference to being warned every time I used a torch to look out for fire. I am sure these precautions have kept us out of trouble," and has described the precautionary measures that he has been taking when using the oxy-acetylene torches around the Diesel units, which is evidence to show that extra precautionary measures are always taken by the supervisors when it is necessary to use oxy-acetylene torches on Diesel units.

Carrier is showing as Exhibits F and G sworn affidavits under dates of September 9 and 10, 1938, to show the Board that Mr. Wilson is indifferent and careless, in fact, an individual without discretion.

Exhibit H is the personal record of Machinist Wilson since date of employment. Also attached, and shown as Exhibit I, is statement by Mr. F. B. Sineath, Diesel foreman, at Jacksonville, Fla., covering the use of oxy-acetylene torches in the Diesel shops and stating that "Mr. Wilson used the torch not only without my permission but completely without my knowledge" and "he was familiar with the rules covering the use of any flame or torch."

The carrier asserts and maintains that the bolt which Machinist Wilson tried to remove by burning, could have been removed without this danger, as aforesaid; that Machinist Wilson was unauthorized to use the torch for this purpose on Diesel unit 519; that there were signs in the Diesel shops prohibiting smoking and also warnings to keep open fires away as they were dangerous, and despite all this, he used the torch in one of the most dangerous places it could possibly have been used and caused damage to the property of the company by his carelessness and indifferent attitude toward his work. By using the unauthorized torch on Diesel unit 519, he caused a serious fire, created delay in performance of work as well as caused damage to the equipment. By the above he violated Rule 32, paragraph (b), and Rule 21 of the "Rules and Regulations for the Government of Shops."

Carrier contends that the discipline of thirty days' actual suspension is not unjust or unreasonable, and administered to prevent repetitions. Therefore, it respectfully requests the National Railroad Adjustment Board to deny this claim.

**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.

The claimant was disciplined for carelessness in the use of an acetylene torch on a Diesel locomotive which resulted in a fire in the locomotive. The charge preferred does not refer to the violation of any specific rule but, from

the investigation and the submission, it is apparent that the carrier claims that Rule 32 (b) of the agreement and Rule 21 of the Rules and Regulations for the Government of Shops were violated. Both of these are in general terms, the first providing that the employe must apply himself diligently during working hours, the second that he must take every precaution against fire.

Just what the specific negligence was on which the carrier bases its charge is not clear. It is claimed that he used the torch without authority from the foreman, that he used it in a place where oil-soaked dirt had collected, and that he did not take proper precautions to have an extinguisher with him. There was, however, no rule which required him to get the foreman's permission. Such rule was promulgated after the fire took place. Before the fire the practice had been for machinists to use a torch when they regarded it as necessary. He did have his helper use the air hose to blow out the dirt which had accumulated in the area where he was working. And he did have a fire extinguisher with him. The carrier was evidently conscious of the fact that there was no specific act of negligence on which it relied. For in the carrier's rebuttal we find this statement as the justification for its action in disciplining this man: "It is the contention of the carrier that in this case Machinist Wilson did not take the proper precautions or the fire would not have happened." In other words, if an employe uses an acetylene torch and fire results, there is ipso facto carelessness and a neglect of duty. We do not believe that there is any such presumption. It is admitted that there is an element of danger in the use of a torch in places where there is grease and oil. This is one of the hazards of the job. If the employe violates no specific provision of a rule and uses reasonable precautions to guard against the hazards of the employment, that is all that can be expected of him. Discipline in this case was unwarranted.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY ORDER OF SECOND DIVISION

ATTEST: (Sgd.) J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1946.