

Award No. 13294

Docket No. MW-14501

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The assessment of thirty (30) demerits against the record of Section Foreman Walter Griswold for alleged violation of Rule 364, paragraph 5(a) of Rules and Regulations for Maintenance of Way and Structures was improper and on the basis of unproven and refuted charges.

(2) The record of Foreman Walter Griswold be cleared of the unfavorable entry of thirty (30) demerits referred to in Part (1) of this claim. (Carrier's file PR-9656)

OPINION OF BOARD: On September 27, 1962 Carrier imposed 30 demerits upon the record of Foreman W. Griswold for an alleged violation of Rule 364, paragraph 5 (a) of Rules and Regulations for Maintenance of Way and Structures following a fire on car NWX 4587 while the weed burner was working on a neighboring track on September 12, 1962.

That provision prohibits the operation of a weed burner within the proximity of certain structures, but does not extend responsibility to the foreman for operations within the prohibited area. Inasmuch as the Claimant was not the operator of the weed burner he cannot be held responsible for its improper operation. Nor can he now be held responsible for failure to report the weed burner operator's alleged rule violation since that was not the reason for assessing the demerits.

Accordingly the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of THIRD DIVISION

ATTEST: S. V. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.