

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21778
Docket Number MW-21858

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Peoria and Pekin Union Railway Company

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

(1) The suspension of ten (10) work days imposed upon Truck Driver Jose Serrano was capricious, arbitrary and without just and sufficient cause (System File A-TC 546-75).

(2) Truck Driver Jose **Serrano** shall now be allowed the benefits prescribed in Agreement Rule 17(c).

OPINION OF BOARD: The threshold question posed by this case is whether claimant's declination to perform **the** torch cutting work without protective welder's gloves falls within the persuasive **ambit** of Third Division award 14067 which articulates in part the well established rule that an employe is required to execute his assigned duties, even though he feels aggrieved.

"**He** is forbidden to resort to self-help, but is free to process his grievance via the established grievance machinery. He cannot refrain **from** performing his assignment **with** impunity. The corollary to this rule, couched as an exception, grants an employe the right to abstain from executing an assignment when confronted by an immediate danger to himself, property, or the public. Such immediate danger to his safety, if **proven**, exempts **an** employe from performing the task."

Claimant testified that he had sustained a burn the previous day **while** cutting rail without protective welder's gloves. He also attested that he had frequently performed this task **in** the past without such protective equipment. In fact, the record shows **that** other **employees** had cut rail in the same **manner** without injury, outrage or demonstrable concern for said equipment.

This work practice appears on its face contrary to reasonable safety precautions. This is particularly true in the Railroad industry, but specific safety standards **or** industry codes were never raised or asserted as having been violated. The practice of cutting rail without

this equipment has been routinely accepted by carriers, **supervisors** and **employees**. The evidence on this point is uncontested.

Claimant would not have refused to carry out this assignment, had he not suffered a burn the day before. He would in all probability have perfunctorily performed the task without question. Did this experience create an apprehension, that could reasonably be construed as **presenting** an immediate danger to himself, if he repeated it again in the same manner? Claimant did not report the previous day's incident to his supervisors or remonstrate for protective equipment immediately thereafter. Prudence would have dictated some constructive follow-up action.

Qualitatively, how much weight should this Board give to claimant's personal safety concern. The record does not show that anyone was ever injured by cutting rail without this equipment. The injury was not reported when in fact it should have been. What was the likelihood given the statistical record for this type of work for an injury occurring that is significantly on all fours with the definitorial requirements of award 14067? (SUPRA) The **answer** is at best remote. Accordingly, based upon the whole record, the Board finds that **carrier's** ten (10) day disciplinary suspension was not **unreasonable** under the circumstances.

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

That the parties waived oral hearing;

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1977.