

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22286**

Docket Number MW-22171

Abraham Weiss, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employes**  
(Chicago, Milwaukee, St. Paul and Pacific  
( Railroad Company

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

(1) The dismissal of Welder Laborer R. A. Rettenberger was without just and sufficient cause and excessively disproportionate to the offense with which charged (System File **D-1924/C#** 28).

(2) The benefits and privileges of Agreement Rule 18(e) shall now be extended to the claimant."

OPINION OF BOARD: Claimant, a welder laborer, was dismissed from service by his welder foreman for allegedly failing to provide flag (safety) protection for his foreman on two separate occasions on January 28, 1976. The welder foreman at the time of the incidents was engaged in grinding a frog on Carrier's main line tracks.

**Claimant's** function and responsibility on the day in question was to alert his foreman to any oncoming train or track vehicle approaching the section of track (or rails) upon which the foreman was working. Twice that day the foreman barely escaped possible injury or death because of moving vehicles on the rails, without having been warned of their approach by Claimant.

The facts **brought** out at the hearing are that:

- 1) Claimant was a relatively new **employee**, with three months of service with the Carrier.
- 2) January 28 was his first day as a welder laborer.
- 3) Claimant was aware of his duties, but did not apparently devote his full attention to them. He admitted that "when I was watching for the trains I was thinking about something else, on my mind, bothering me."

The Organization bases its **case** on the assertion that the Foreman was negligent in instructing Claimant in his duties. The record, however, includes explicit statements by Claimant that he knew that his job was to warn the foreman of oncoming trains ("yes, I **know** that is my business")-and that he knew his responsibility under the flagging rule.

The Organization also insists that the foreman did not inform Claimant of the trains that were scheduled to operate that day on the main line, and so did not properly instruct Claimant. In essence, this allegation seeks to assign culpability to the **foreman.** **But** such omission even if proven, does not, in our judgment, excuse Claimant's inattention or mitigate his failure to perform his duties properly, thereby exposing his foreman to the risk of serious injury or even death. It was the Claimant's responsibility to alert the Foreman to oncoming traffic and to furnish adequate flagging protection while the foreman was engaged **in working** on the track; he failed twice that day to perform that **relatively simple** task. Even if the foreman were remiss in not notifying Claimant- of scheduled trains, this did not relieve Claimant of his responsibility to be alert to traffic endangering the foreman's safety. In **light** of Claimant's paramount responsibility for the foreman's safety, the Organization may not seek to exculpate him by charging that the Foreman was negligent in not informing Claimant of the train schedules. This is especially so in light of the Organization's statement, in their appeal on the property, that Claimant "was not as attentive to his duties as he should have been."

Since the evidence on the record supports the charges, we are not warranted in controverting Carrier's findings and the measure of discipline imposed. This is consistent with the long established rulings of this Board that it will not upset Carrier's discipline based on substantial and credible evidence unless the record shows that Carrier's action was arbitrary, capricious or in bad faith. The record before us does not support such a finding, and hence we must deny the claim.

**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;

Award Number **22286**  
Docket Number MW-22171

Page 3

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** 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 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 **12th** day of January **1979**.