

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22754
Docket Number MW-22812

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The discipline (reprimand) assessed Section Laborer Tim Valencia was unwarranted and without just and sufficient cause (System File D-6-78/MW-8-78).

(2) The reprimand shall be expunged from the claimant's personal record."

OPINION OF BOARD: Claimant, Tim Valencia, a Section Laborer assigned to Carrier's Shoshone Section Gang with headquarters located at Glenwood Springs, Colorado, was given a written reprimand following a formal investigation held on January 4, 1978, for his role and responsibility associated with destruction of Company property by fire.

On December 20, 1977, members of the Shoshone Section Gang travelled by Section Motor Car to Mile Post 345.2 located midway between sidings Dotsero and Shoshone and fifteen (15) miles east of Glenwood Springs, Colorado, to perform some track work. At about 3:45 p.m., the Gang completed their work and while waiting for two trains to clear so they could head home, a decision was made by the Foreman to start up the motor car so it would be warmed up and ready to go. Because of the below freezing weather that day, the gas in the glass bowl on the fuel line had turned to ice. In an effort to solve the problem, the Foreman removed the bowl and cleaned out the ice with a pocket knife. This action, however, was not sufficient as it was then discovered that the fuel line had frozen too. As an attempt to thrust a wire through the fuel line failed, the Foreman next lit a flare (fusee), the burning tip of which has a temperature of about 2,000° Fahrenheit, handed it to the Claimant and told him to hold the fusee seven (7) to eight (8) inches from the frozen fuel line to thaw it. Approximately twenty (20) to thirty (30) seconds later, Claimant hollered to the Foreman

who was now inside the Motor Car, that the Motor Car had caught on fire. The Foreman and Claimant responded immediately and attempted to put the fire out with water and snow but to no avail. As a result, the Motor Car was completely destroyed.

The Organization takes the position that under the circumstances which it characterizes as mitigating, strict adherence to standard procedures for dealing with this particular problem and strict adherence to established safety rules is not always possible. The Organization argues that in situations where employees find themselves in a desolate area and where equipment is frozen, it is a common practice to apply a fusee to remedy the problem. In any event, the Organization maintains, had the Claimant not followed the instructions of his Supervisor, he would have been guilty of committing insubordination. On this basis alone, the Organization contends, the Claimant should not have been disciplined at all.

This Board views the occurrence of the fire as an unfortunate consequence of the several ill-advised decisions made by the Foreman to solve the problem at hand. Nevertheless, the Claimant cannot and should not be absolved from his failure to abide by the established safety rules and his attendant failure to notify his Foreman that his instructions were not in conformance with either the established general procedures or the safety rules. Had the Claimant so informed his Foreman that his directives to him were in violation of the safety rules and had the Foreman then reissued those directives, then it appears the Claimant may have made a case based on possible insubordination. However, such was not the case in this instance and therefore, it is our determination the Claimant must share in the responsibility associated with the fire and ultimate destruction of the Carrier's Motor Car.

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

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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:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.