

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24027
Docket Number MW-23928

T. Page Sharp, Referee

PARTIES TO DISPUTE: { **Brotherhood of Maintenance of Way Employees**
 { **Seaboard Coast Line Railroad Company**

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

(1) The suspension of five (5) days imposed upon Welder G. S. Williams and Welder Helper W. L. Salter for alleged violation of Rule 722 of the Seaboard Coast Line Railroad Company's Operating Rules and Rule 70 of the Seaboard Coast Line Railroad Company's Safety Rules was Without just and sufficient cause and on the basis of unproven charges (System File 37-SCL-79-88/12-39(79-44)J3).

(2) Welder G. S. Williams and Welder Helper W. L. Salter shall have their **personal records** cleared of the charges **leveled against them** and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: A welder and his helper were **grinding** a weld of a broken rail when a fire broke out on the **welding** truck parked **some forty to sixty feet away. The result of the fire was that the truck was severely damaged and the welding machine was destroyed.**

At the **investigation** held to determine who had violated the Carrier's safety rules, numerous **employees** who were present at the time of the fire appeared **and** testified. No one could directly testify as to the cause of the fire. When asked if he had **complied** with operating Rule No. 722 and Safety Rule No. 70 the welder answered in the affirmative and explained how he had inspected the **gasoline** canon the **truck** to make sure **it was** safely installed.

To get to the spot of the broken rail the truck had been driven up the track structure, the only way to get to the location. The bank was **giving** away and truck could not have been parked much further although the welder testified that it could have been driven ten **more** feet.

Operating Rule 722 and Safety Rule 70 are generalized rules that call for safety in the operation for the prevention of fires. The **Carrier found** the welder and his helper violative of these rules in that "due to carelessness in placing the **truck** assigned to them too close to the work being performed by them caused the fire which **damaged** the **assigned** company property."

At no point in the investigation did any witness testify that he **knew** the cause of the **fire**. A **Roadmaster** of the Carrier testified that it could have been developed at the other **end** of the cutting torch tube where it connected **to** the regulator.

It is pure speculation to state dogmatically that the truck was **parked** too close and that by inference a spark "**jumped**" to the **truck** and caused the fire. The **Board** was furnished no evidence as to the length of a "jump" of a **spark** from a grinding **machine**. There **is** no evidence to establish that ten more feet from the **truck** would have made the operation safe from **the** sparks even assuming **arguendo** that **sparks** were the cause of the fire.

There being insufficient evidence to establish any violation of the Operating Rule or the Safety Rule the **Carrier** has failed to carry its burden of **proof** and the **claim must be** sustained.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By

Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant



Dated at **Chicago**, Illinois, this 15th day of November 1982.