

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **242 4**
Docket Number **MW-22318**

Tedford E. Schoonover, Referee

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

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

(1) **The** disciplinary demotion of Welder W. A. Roundtree, his **dis-qualification** as welder and the suspension of thirteen (13) calendar days imposed **upon** him was without just and sufficient cause, excessive and **unwarranted** (System File **C-4(13)-WAR/12-39 (80-34) G2**).

(2) **Mr. W. A. Roundtree** be reinstated as a welder with seniority as such unimpaired, his record be *cleared* and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: **Claimant** entered service and established seniority as **laborer and welder helper**, August **30, 1965**. He was **regularly** assigned as a welder at the Savannah Rail facility *throughout* his entire length of service except for a few **months**.

The incident resulting **in** the disciplinary action occurred on February 14, 1980. **Supervisory personnel** inspecting rail already welded discovered Claimant apparently failed to pre-flash welds as required. Disciplinary procedures **were** initiated **on** the date following the discovery. The record shows proper procedures **were followed** insofar as the hearing was **concerned**.

Notice of **hearing was** issued **with allegations** as follows:

"You have been instructed **numerous times** . . . that if it is necessary to torch out and reweld a weld--that the ends of the torch out rails must be flashed off and must be **pre-flashed off at least one-half inch or more depending on** visual inspection of the torch out ends. **This** is necessary to square ends of rails and to **remove any cracks** or other Impurities raining **from** torch cutting the rail. We have **cautioned you on this extremely important matter numerous times**. **Only in this way are we assured we have a good weld** after it has been torch cut.

During the week of Feb. 11, **12, 13** and 14th you had a total of 31 welds; Nine of **these** had no preflashing and 15 had **only** one-fourth **of** an inch.

Your failure to carry out these important instructions **cannot** be tolerated. As a result of the incident above you are hereby charged with violation Of Rule G-1 of SCL RR Co. Book of Operating Rules which reads in part as follows:

'... insubordination . . . incompetency . . .
will subject the offender to dismissal."

During the hearing **Division** Engineer low defined insubordination as disobedience or failure to submit to authority. **He** defined **incompetence** as lacking a qualification or ability or skill to perform a designated operation. Entering these **definitions** into the record arose over confusion and misunderstanding over the meaning of the terms.

Claimant Roundtree established seniority as a welder helper **on** April 28, 1966, and as a **welder on** July 2.5, 1968. He was regularly **assigned** in the Rail Welding Plant throughout the entire length of his service except for a few months. **He** was regularly assigned as First Shift Welder at the plant since April 26, 1978, **when** the plant was converted to the electricflash butt rail welding process.

During the hearing, Supervisor Ayscue described Claimant as **somewhat** difficult to instruct because he **assumed** an attitude of **knowing more** about the welding process than anyone else, including the **Chemetron** representatives on duty at the plant. On this **point Mr.** Ayscue stated:

"Well it **has been** necessary from **time** to time to talk with Welder **Roundtree** about certain functions **he has** performed and **from time to time he would** not perform these functions and so I've cane to the conclusion that he is just untrustworthy.

His actions in that he has an attitude that he **knows more** about the **equipment and how the work should be performed** than the, how he's instructed to do it."

Question by A. C. **Low, Jr.**, Division Engineer:

"**To me it means** thatwehaveover a **period** of time **confronted Mr. Roundtree** with the fact that he was not **complying** with out instructions, yet he *continues* to hold the post of welder, holds the position of a welder **and makes melds right on, would** you explain that please?

A. Well, I have not before had occasion where Mr. Roundtree was actually insubordinate.

Q. In your opinion has he been **competent** up until the incident on February 14?

A. **Apparently."**

Further evidence on the matter of Claimant's qualifications as a welder is in the form of testimony of L. Brown, Assistant Supervisor of the plant:

Question by Mr. Low:

"How long has Mr. Roundtree been doing this particular work at the plant, as a welder?"

A. Oh, since the welding machine has been there and I believe it was April of 1978.

Q. Who qualified Mr. Roundtree on that particular type welding process?

A. Well we had a learning period, all of us trying to learn together, but a Chemetron representative was there to instruct us all and the Supervisor Mr. Ayscue had made a copy of the Southern Specifications to be our guideline and I'll assume that Mr. Ayacua and I and the foremen and ● Ilcoaceraed was in agreement that Mr. Roundtree was qualified to form the machine."

Question by F. E. Wallace, Asst. General Chairman to L. B., Assistant Supervisor :

"Then you said in Mr. Roundtree has been and was competent in making welds at the electric butt welds, is that right?"

A. Well competence enters into a definition problem if you're saying if Mr. Roundtree is capable of making a good weld I would say yes, but the fact that he made them in a, not a prescribed manner, than I would strongly insist that we cannot competent him to carry out these instructions."

Other instructions by Mr. Low on the matter of competence to Mr.

Brown:

"Q. Incompetence is lacking qualification or ability or skill to perform a designated operation or task, do you agree with this interpretation?"

A. Yes sir.

Q. Are you in accord that a person can become qualified to perform a certain operation and then through indifference or other disabilities become incompetent and lack the qualifications to perform this work?

A. That is correct.

Q. It is entirely reasonable then to **assume** that a person once qualified is not to be perpetually qualified for any designated operation, is that right?

A. **That's** right, a person can be qualified **and** have the ability to be competent and then through lack of concern or negligence or carelessness or any other reason that he might, or even attitude he can **become incompetent.**

Q. I take it that you are in accord with the **statement** that a person once qualified or competent will not remain competent or qualified perpetually?

A. That's right."

Question by **Mr. Low** of Mr. Rucker, Foreman on First Trick:

"Q. **In your** opinion is **Mr. Roundtree** a competent welder?

A. **Well** if he would **follow** instructions yea, but sometimes he gets careless.

Q. Then you're saying that he is competent, but ha sometimes **lacks on following instructions, is that what** you're saying?

A. Right. "

Mr. Rucker also testified that generally the Claimant produced about as much as **anyone** else.

During the hearing, Claimant Roundtree admitted he had received instruction in preflashing on rewelds but had **not performed** the preflashing on the rewelds **in question.** In explanation, Claimant gave a wide ranging and detailed **account** of the methods used in making electric **rewelds.** **His knowledge** of the proper methods as prescribed in **Company** rules was **clearly** shown in his account. He also added, however, that many cases of rails broke in the straightener after all the required **weld and reweld** procedures had been followed. **He** even referred to instances **where metalurgists** had been brought in by the Company to **analyze** the problem. According to the Claimant they were **unable** to explain it except that possibly such breaks were caused by the **extra** heat used in the preheat procedure. He stated that breaks of many rewelds showed it to be inconclusive that preheating made for good welds.

Claimant's failure to **follow** prescribed procedures was not done **as a short** cut or maliciously premeditated. Nor **was** it due to carelessness, negligence or incompetence. Rather, he took this course because of his own feelings that preheating did not necessarily produce a Food weld. Mr. Low, Division Engineer, conducting the hearing did not appear to be so much interested in hearing Claimant's

views on rewelds as he was in **testimony** more directly related to the charges of insubordination and incompetence.

The evidence manifested plainly **and clearly** Claimant's attitude of knowing **more** about the welding process **than** his supervisors or representatives of the **Chemetron** company. It was this attitude that provided the basis for the charge of insubordination. He appeared reluctant to accept or follow instructions which did not accord with his **own** views. His insubordination was not so **much** in the nature of outright defiance and confrontation but rather in doing the job his own way regardless. But **it was** insubordination nevertheless. Management has every right to demand and expect compliance with **reasonable** working rules **and procedures**. Employees acting in defiance should certainly be trained and **counseled** but, failing to respond to these efforts, disciplinary action is the next step in assuring compliance. The record **shows** supervision tried on many occasions to counsel with Claimant on the problem.

But the charge of **incompetence** is another thing. Claimant's long record as a welder and **testimony** by his supervisors demonstrates the Claimant as a fully qualified welder. The Carrier **made** an effort, through **testimony** at the **hearing**, to **show** competence can be lost through lack of concern, negligence, carelessness or other reasons. These **conditions** do not appear to be present in this case. On the contrary, what we have is a fully **competent** welder with a **know-it-all attitude** who did his job in his own way in defiance of prescribed rules and procedures. While this supports the charge of insubordination, it does not support the **charge of incompetence**.

In **demoting** Claimant to welder helper and **suspending him from** service for **13** days, **Carrier** found the **charges of insubordination** and incompetence fully **substantiated**. In view of the evidence reviewed **above** it is the Board's opinion that the **charge of insubordination was substantiated but not the charge of incompetence**. It must **also be** considered that we are dealing with an **employee** of some **14** years service without any prior disciplinary record who was **recognized** as a **competent welder by his supervisors** and no prior instance of **actual** insubordination. The Board believes that his suspension **and demotion** to welder helper since March **1980** should be sufficient chastisement. It is, therefore, the decision of this Board that Claimant be reinstated as a welder effective with the date of his **demotion** and that his seniority **as** a welder be restored, without impairment. **Claim for time lost is denied**. It is hoped that in the future **Claimant** will be **more** receptive to instructions by his **supervisors** and **more cooperative** in complying with **company** rules and procedures.

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 **discipline** was excessive.

A W A R D

Claim sustained in accordance with the **Opinion**.

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 **14th** day of **March 1983**.

