

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25074
Docket Number NW-25214

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employes**
PARXTES TO DISPUTE: (
(**Elgin, Joliet** and Eastern Railway **Companay**

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

(1) The forty (40) demerits imposed upon Welding Foreman R. **Ruvalcaba** for alleged 'responsibility for the disappearance of Welder **#761**' was on the basis of unproven charges and in violation of the Agreement (System File 142-293/Case **VM-30-82/SAC-8-82**).

(2) The claimant's record shall be cleared of the forty (40) demerits imposed upon him."

OPINION OF BOARD: An investigation was scheduled on January 25, 1982 to determine Claimant's responsibility in connection with the disappearance on January 8, 1982 of Welding Machine No. 761. The investigation was postponed several times primarily because of delays initiated by Claimant, but was eventually held by Carrier on April 22, 1982. Claimant did not attend said hearing but was represented by the Organization's Local Chairman. Based upon the investigative record Carrier found Claimant negligent in securing the safety of Welder No. 761 and assessed forty (40) demerits against his personal record. This disposition was appealed.

In defense of his petition, Claimant contends that the investigation was improperly conducted since Carrier failed to produce as witnesses all the **employes** who had knowledge of the circumstances under investigation. He avers that his representative was denied access to the investigation records and asserts that a witness was permitted to assume contradictory roles at the hearing. In effect, he contends that the witness acted as a hearing officer and a witness which he maintains is a procedural inconsistency. He argues that other employes possessed keys to the welding shop and as such, had potential access to the Welder. Moreover, he asserts that Carrier's contention that he was the last **employe** to use Welder No. 761 is, at best, speculation and not conclusive proof. He maintains that the investigation was further procedurally tainted **when Carrier's** medical doctor disregarded his physician's report and ruled that he was able to participate in the hearing.

Carrier contends that the record pointedly establishes his negligence in securing the safety of Welder No. 761. It argues that the procedural objections raised are without substantive support since the evidence clearly demonstrates that he deliberately obstructed the convocation of the hearing and failed to appear to defend his actions. It asserts that it fully complied with the due process requirements of Agreement Rule 57 and notes that its Chief Surgeon's determination of his medical fitness to attend the hearing was premised upon a **careful** consideration of the medical reports prepared by Claimant's **two** (2) personal physicians.

It avers that Claimant was mindful of the rules regarding the safe-keeping of this equipment and as the last person using it he was patently negligent in observing this explicit equipment security requirements. It contends that the testimonial statements of the employees working under Claimant's direction on January 8, 1982 unmistakably show that Welder **No. 761** was not on truck 560 when it was returned to the shop by Claimant that day at about **3:30 P.M.** and argues his presumptive negligence is further buttressed by the testimony of employees who stated they had not seen this equipment during the subsequent work days. Carrier asserts that Claimant was further remiss when he did not report the incident on January 16, 1982 as he was ordered to do, but instead waited until January **19**, 1982 to report it to **Carrier's** Police Department. It maintains that there was no reason for anyone to use Welder No. 761 between January 8, 1982 and January 13, 1982 and observes that Claimant was the last person to use it. It notes the pertinency of Police Sergeant W. **Evensen's** testimony who stated that it was the consensus of all the employees involved that Claimant had this equipment in his possession on January 8, 1982 and it was not seen again by any of them.

In our review of this case, we concur with Carrier's position. Careful analysis of the investigative record does not reveal that Carrier violated any of the due process protections provided by Rule 57 or conducted the trial in a manner prejudicial to his interests. In particular, we reviewed the factors underlying the Chief Surgeon's determination with respect to Claimant's ability to attend the investigation and agree with the Surgeon's finding that Claimant was able to participate in the hearing. On the other hand, we are somewhat disturbed by Claimant's uncooperative deportment during **the time Carrier was** attempting to schedule an investigation and find that he contributed to his own predicament.

Similarly when we review the record testimony of Carrier's witnesses, especially those witnesses who were employees working under Claimant's direction, we find no evidence that would place in doubt Carrier's contention that Claimant was negligent. The record is amply persuasive on this point. Claimant did not exercise the care required of him in securing the safety of Welder No. 761 and the discipline assessed against his record for this negligence and dereliction of duty was justified.

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 not violated.

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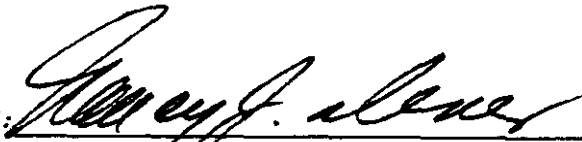
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.