

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25872
Docket Number MW-25880

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The three (3) days of suspension imposed upon B&B Mechanic M. G. Carmean for alleged violation of 'Rule 3004 and Rule 3020' was arbitrary and on the basis of unproven charges (System Docket CR-48-D).

(2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On May 24, 1982, Claimant, a B & B Mechanic, sustained a hand injury while on duty when he touched the tip of a cutting torch that he had been using. He consequently lost five days of work. Claimant was notified to appear for an investigation into the following charge:

"Violation of Rule 3004 and Rule 3020 of the S-7-C Safety Rules for Conrail employees in connection with your lost time personal injury on May 24, 1982."

Rules 3004 and 3020 read as follows:

"RULE 3004

When it can be avoided, employees must not rely on the watchfulness of others. They must protect their own safety.

RULE 3020

Wear suitable gloves and clothing:

- (a) That gives ample body, arm and leg protection. When acetylene, electric or thermit cutting or welding, wear cuffless overalls or trousers. Short sleeve or "T" type shirt may be worn if not performing work requiring arm protection.
- (b) Not badly torn or loose enough to be hazardous, including long necktie or jewelry, unless fastened or securely tucked inside shirt.
- (c) Not greasy, oily, or saturated with flammable substance.

- (d) With loose or baggy trouser cuffs or bottoms secured to prevent flapping, catching or dragging.
- (e) That does not interfere with vision or hearing, except authorized hearing protection."

As a consequence of the investigation (which was first postponed and then later held on June 17, 1982), Claimant was assessed a three-day suspension. Claimant had no prior discipline, but he did have an injury record in 1979 and 1980 that included an off duty auto accident, on-the-job muscle strain, and an on-the-job eye injury. Claimant has lost a total of 285 work days due to injuries since September 16, 1979.

It is Carrier's position that there is ample evidence to support its allegation of a Safety Rules violation. Claimant admittedly removed his gloves prior to completing his assigned task. He compounded his carelessness by touching a hot torch that he had just been using. Carrier maintains that it has the right and responsibility to establish and enforce Rules designed to protect employes, patrons, and the public.

The Organization argues that Claimant did wear safety gloves while welding. Further he was not a qualified welder and had little knowledge of the heat retention of the cutting head. The Organization believes that the injury would not have occurred had Claimant worked outside the building, using tools available there. It also believes that Claimant would not have been subjected to discipline had he been available for light duty.

Upon a complete review of the record of the case, this Board concludes that Claimant was provided with a fair and impartial hearing, there was sufficient probative evidence adduced at the investigation to support a finding of guilt, and Carrier was neither arbitrary nor capricious in its assessment of discipline.

Claimant acknowledged at the investigation that he had been performing the task of burning off and on for a few years. We must assume -- and Carrier had the right to expect -- that Claimant was capable of doing this work without injuring himself.

Claimant's record reveals an individual who is accident prone. When normal procedures (such as the issuance of Special Rules) for ensuring that employes conduct themselves safely are not effective in bringing about that result, Carrier has a right to embark upon a program of progressive discipline. Such a program is intended to impress upon an employe the need to exercise the utmost diligence in working with tools and equipment on a day-to-day basis.

The discipline imposed here, which is by no means excessive, is designed to be corrective in nature and should place Claimant on clear notice that he must practice care and caution in the performance of this work.

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 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

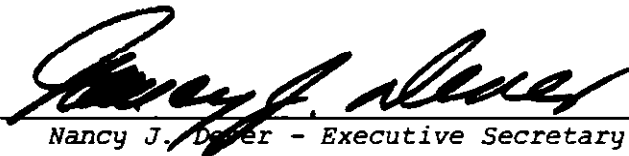
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.