

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26196
Docket Number MW-26233

Edward L. Suntrup, Referee

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

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

(1) The disciplinary disqualification of Welder Foreman J. B. Lavender as welder foreman for alleged 'Failure to properly perform your duties as Foreman in charge of orgotherm welding gang 1447 on September 9, 1983' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-421-D).

(2) Mr. Lavender's seniority as welder foreman shall be restored and unimpaired, his record cleared of the charge leveled against him and he shall be allowed the difference between what he would have received at the welder foreman's rate and what he was paid in a lower rated position until he is returned to work as a welder foreman with seniority as such unimpaired."

OPINION OF BOARD: The Claimant was charged with failure to properly perform his duties as Foreman in charge of Orgotherm Welding Gang 1447 on September 9, 1983, when he failed to weld joints at the Route 24 road crossing at Laurel, Delaware after being instructed to do so by the Track Supervisor. As a consequence he was also charged with leaving the Delmarva Secondary in an unsafe condition at the location cited above. The Claimant was also charged with desertion of his assignment on this date at approximately 1:00 PM and with falsification of payroll records. After a Hearing was held on September 22, 1983, the Claimant was notified on October 4, 1983, that he had been found guilty as charged and he was disqualified as Foreman. After an Appeal Hearing was held on November 10, 1983, the Claimant was advised that his appeal on the charges relating to desertion and falsification of records was sustained. Appeal relative to the other charges was denied and the Carrier, "... considering the serious nature of the offense", held that "... the discipline assessed was proper."

A review of the record shows that the Track Supervisor testified that he instructed the Claimant on the morning of September 9, 1983, along with another employe by the name of Hagarty to go to Laurel, Delaware to weld six welds at the Route 24 road crossing. On September 10, 1983, the Track Supervisor discovered that Mr. Hagarty had completed his work as instructed but that the Claimant had not. The "... four compromise joints" which the Claimant had been instructed to weld had not been welded. Further, some spikes which had been removed from ties near one of the joints had not been replaced. During the Investigation the Claimant never denied that he did not replace the spikes on at least one of the rails after splice bars were taken off and then put back on because a train was coming, nor did he deny that none

of the welding had been done before he marked off from his assignment on that day. There is sufficient evidence of probative value in the record to warrant the conclusion that the Claimant was guilty as charged. The record shows, in effect, that the Claimant not only did not make the repairs to the track as so instructed, but left it in a less safe condition when he left for the day. The National Railroad Adjustment Board has ruled on numerous occasions that non-compliance with instructions is a serious offense in the railroad industry (Second Division Awards 8223, 8390 inter alia). In the instant case, such non-compliance could have had serious safety repercussions. On merits the instant Claim cannot 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

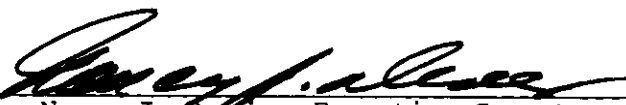
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.