

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26267
Docket Number MW-26488

Edward L. Suntrup, 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 discipline (written reprimand) imposed upon Welder J. L. Mitchell for alleged 'Failure to comply with safety rule 83020 (A) and #3039 at Canton, M.W. Shop, Canton, Ohio at approximately 8:15 A.M. on September 21, 1953, which resulted in a personal injury' was unreasonable, unwarranted and on the basis of **unproven charges** (System Docket CR-776-D).

(2) The claimant's record shall be cleared of the charges leveled against him and the written reprimand shall be removed from his record."

OPINION OF BOARD: The Claimant was charged with failure to comply with Safety Rule Nos. 3020(A) and 3039 at the **Carrier's Canton Maintenance of Way Shop** at approximately 8:15 A.M. on September 21, 1983. The alleged violation of these Rules resulted in a **personal injury**. After a Hearing on this matter was held on December 28, 1983, the Claimant was advised that a Letter of Reprimand was being made **part of his personal file**. The Rules at bar read, in pertinent part, as follows.

"Safety Rule 3020(A):

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.

Safety Rule 3039:

If necessary to look away from direction in which walking **stop while doing so.**"

The record shows that the Claimant was working as a Welder at the Canton Shop. After he was give" a" order to do some welding on Machine **BR1181**, which is a **brush** cutter, he attempted to secure an Overhead Crane to move his welding equipment and tanks close to the machine. Since the cranes were all being used the Claimant was ordered to move his welding equipment by hand to the work site. While doing so he was injured when he cut his shoulder on an exposed **sharp** burr on a mounted I-Beam.

It is the position of the Carrier that the **Claimant** was injured because he was not wearing proper clothing. The Board cannot find sufficient evidence of record to warrant the conclusion that the Claimant should have been wearing **his** welding jacket when the injury occurred, nor that the injury would not have occurred if he would have been **wearing** the jacket. The record also establishes that there were many obstacles **in** the shop around which the Claimant had to negotiate his welding equipment in order to get **it** close to the Brush Cutter which created a potential Safety Hazard. Lastly, the Board can find no substantial evidence showing of negligence on the part of the Claimant while he was **moving** the welding equipment.

As moving party it **is encumbent** upon the Carrier to bear the burden of proof that the Claimant was in violation of the Rules at bar (Third Division Awards 5881, 6056, 10692, 17347). Without questioning the Carrier's right to enforce its Safety Rules, the Board cannot find violation of them in the record presented to it. 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

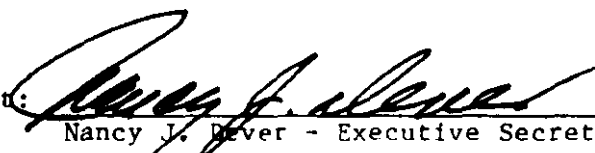
That the **Agreement** was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 20th day of March 1987.