

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri-Kansas-Texas Railroad Company

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

(1) The discipline imposed upon Welder J. T. Stewart and Machine Operator G. E. Jones for alleged negligence and various rule violations on September 18, 1986 was without just and sufficient cause and on the basis of unproven charges (System Files 300-242 and 300-263).

(2) The claimants shall be accorded the relief set forth within Rule 6 of Article 23."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Between 5:30 P.M. and 6:00 P.M. on September 18, 1986, while a machine operator and welder were sharpening blades on a brushcutter, the machine caught fire. The machine was soon engulfed in flame and extensively damaged.

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Claimants were charged with alleged negligence in that they violated numerous Rules of safety, caution and the proper exercise of their responsibilities. Following formal Investigation, Claimants were found guilty as charged.

These circumstances indicate that the probable cause of the fire came from sparks emanating from a carbon arc gouger being used by the welder in sharpening blades. The arc gouger constantly produces sparks and for that reason the machine operator stood ready and was actively putting out grass fires. The exact cause of the fire is unknown, but testimony indicates that a grass fire is an unlikely cause and that the machine was clean.

The record indicates that after the machine caught fire, the welder called for help and assisted with putting the fire out. The operator rolled barrels of oil and diesel fuel away from the fire. He also used his fire extinguisher, available water, and shoveled dirt until the smoke became too intense. The Roadmaster testified that it would have taken "five minutes to have moved that much dirt."

There is no substantive evidence in the record to demonstrate the exact cause or specific location where the fire began. In considering each of the charges against the Claimants, there is no testimony that indicates a violation of any of the Rules. The Board also finds no evidence that Claimants failed to responsibly use caution and care or that they exercised their responsibility in an improper or unsafe manner.

The weight of the evidence was the responsibility of the Carrier. This Board finds no evidence in the instant record to establish a violation of any of the Rules cited. As the charges brought against the Claimants were not substantiated by the weight of the evidence, the Claim must be sustained (Third Division Award 24027).

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.