

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31863
Docket No. MW-32726
97-3-96-3-29

The Third Division consisted of the regular members and in addition Referee Charles J. Chamberlain when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(CSX Transportation, Inc. (former
(Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline assessed Trackman C. H. Bennett for his alleged involvement in an injury sustained by another employe was without just and sufficient cause, based on an unproven and disproven charge, arbitrary and capricious [System File CB-95-126/12 (95-0512) SSY].
- (2) The discipline assessed Welder W. M. Wilkins for his alleged involvement in an injury sustained by another employe was without just and sufficient cause, based on an unproven and disproven charge, arbitrary and capricious [System File WW-95-125/12(95-0513)].
- (3) As a consequence of the violation referred to in Part (1) above, Trackman C. H. Bennett shall have his personal record cleared of the written reprimand and he shall be compensated for motel, travel time expense and lost wages on account of the incident involved here.
- (4) As a consequence of the violation referred to in Part (2) above, Welder W. M. Wilkins shall have his personal record cleared of the written reprimand and he shall be compensated for motel, travel time expense and lost wages on account of the incident involved here."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This dispute involves an incident which occurred on March 7, 1995, wherein an injury was sustained by Welder Helper O. P. Johnson in repairing a bolt machine.

Claimant C. H. Bennett and F. C. Greer were employed as Trackmen and were operating the bolt machine on Track No. 2 at Carrier's Fanshaw Yard, near Richmond, Virginia. On the afternoon of March 7, 1995, Welder W. M. Wilkins (Claimant) and Welder Helper O. P. Johnson arrived with their welding truck to pick up the bolt machine. Upon their arrival, they were asked by Trackman Greer if they had any bolts with them, because a bolt in the machine had broken. During the process of attempting to repair the machine (first using a bolt provided by Welder Wilkins which broke and later in attempting to temporarily repair the machine with a piece of steel rod) that the injury of Welder Helper Johnson occurred.

Welder Helper Johnson was taken to the Richmond Memorial Hospital for medical treatment to his injured finger. On March 13, 1995, Roadmaster G. L. Phelps wrote Mr. J. B. Hahn, Mr. W. M. Wilkins, Mr. O. P. Johnson, Mr. C. H. Bennett, Jr., and Mr. F. C. Greer advising that an Investigation would be held on March 17, 1995, in the Office of Division Engineer, 100 Oakland Avenue, Florence, South Carolina.

Following the Hearing which was held on March 17, 1995, Claimants Wilkins and Bennett received a letter dated April 6, 1995 from Division Engineer J. C. Tomkins advising that they were being assessed a written reprimand for their involvement in the

incident occurring on March 7, 1995, which resulted in the injury to Welder Helper O. P. Johnson.

The record in this case, which includes a lengthy transcript, reveals a number of inconsistencies in the testimony of Roadmaster Phelps, who was the Carrier official who investigated and initiated the Investigation to determine the facts surrounding the incident.

He admitted that the employees were using a machine which was having problems. He admitted that he failed to provide the proper pins. He also admitted that he was shown a broken chuck by the employees.

It is quite evident that the responsibility for the injury to Welder Helper Johnson lies with the negligence on the part of the Roadmaster who was permitting employees under his supervision to use a faulty machine which, on more than one occasion, was repaired with improper bolts and/or improvised to run on a self-fabricated bolt that was made from a steel rod.

Based on evidence in this record, it is quite clear that while the discipline is not severe and only a letter of reprimand, the fault cannot be properly placed on the Claimants. Accordingly, we find that the claim must be sustained in its entirety as presented by the Organization.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.