

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39338
Docket No. MW-39752
08-3-NRAB-00003-060534
(06-3-534)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) calendar day suspension from service effective immediately] imposed upon Mr. N. Demonte under date of January 18, 2005 for alleged violation of Safety General Rules A, B, I, O (Item 1) and Safety Rules 34 and 36 in connection with a personal injury he reported on November 30, 2004, while working as welder foreman in Franklin Park, Illinois was arbitrary, capricious, excessive and in violation of the Agreement (System File D-36-04-550-07/8-00477 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, all reference to this discipline shall be removed from Mr. N. Demonte’s record and he shall be compensated for any and all lost wages and have all rights and benefits restored that may have been lost as a result of this suspension.”

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.

The Claimant's left eye was injured while grinding metal in preparation for welding a second reinforcing strut onto the bottom chord of an overhead signal cantilever. Either a bit of metal or other debris evaded the personal protective equipment he was wearing at the time.

Our review of the on-property record reveals a procedural objection from the Organization that the notice was deficient in that it did not cite any specific Rules. The objection lacks merit. Rule 18, which requires specificity, does not explicitly state that Rules be cited by number in the notice of charges. The notice in question sufficiently described the substance of the incident to provide the requisite Agreement due process. The transcript of the Investigation also shows that the Organization and the Claimant were clearly aware of the nature and purpose of the Investigation and were not misled in any manner whatsoever.

Turning to the merits, the record reflects that the Claimant was initially reluctant to undertake the planned repair using a bucket truck to elevate him some 16-18 feet above the ground to reach the cantilever. He did not like to work at heights. He agreed to do so after being assured that the Boom Truck Operator would raise him very slowly and make any other movements in a similar manner. Nonetheless, the decision to make the repair in the air left the Claimant in a somewhat awkward position in which to see and perform the overhead work. As a result, he did not wear a face shield while performing the work. The grinding and welding of the first of two struts was uneventful. While grinding before welding the second strut, the injury occurred.

The Claimant admitted he was wearing all required personal protective equipment except for the face shield. He was wearing safety goggles and a respirator. While his decision to forego the face shield is understandable, the Carrier has a specific General Safety Instruction No. 36(n) that requires the use of a face shield whenever using a grinder. Other Rules required the Claimant to abide by such safety mandates. Carrier policy also allowed the Claimant to decline to perform the work overhead if that method did not allow him to fully comply with safety requirements.

Given the foregoing, we find the Carrier's determination of the Claimant's culpability is supported by substantial evidence in the record. The discipline imposed was not shown to be unreasonably harsh or excessive in light of all relevant circumstances. Accordingly, we must deny the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of September 2008.