

Award No. 6152

Docket No. CLX-6192

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

- (a) The Agreement governing hours of service and working conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at the Fargo, North Dakota, Agency January 25, 1949, in the treatment accorded H. R. Krageland in dismissing him from service as a result of an alleged investigation conducted January 25, 1949; and
- (b) He shall now be restored to service with seniority rights unimpaired and compensated for wage loss sustained retroactive to and including January 26, 1949.

OPINION OF BOARD: Claimant Krageland, employed as driver, and on duty at the Northern Pacific Warehouse, Fargo, North Dakota, on January 14, 1949, became interested in a new type of gasoline can, used for supplying station tractors, which had just recently been placed in the warehouse. While examining one of the two five gallon cans, which were equipped with long flexible spouts and valves to shut off the flow of gasoline, Claimant spilled some gasoline on the cement floor. For the purpose, as he testified, of getting rid of the hazard of the spilled gasoline, Claimant threw lighted matches toward it until he had set it on fire. The flame spread to the nearby can and ignited the gasoline in the spout. Both Claimant and a clerk who was engaged nearby made a dive for the can but the clerk reached it first and Claimant then opened the door to assist him in getting it outside. No damage resulted.

Claimant was charged with deliberate and gross carelessness and the record supported the claim. His setting fire to the gasoline inside a warehouse and close to cans of gasoline was deliberate, and his experimenting with the can, with which he had no immediate concern, to learn whether it would leak was gross carelessness.

Permanent discharge of one having five years' seniority seems hard but the conduct involved was so irresponsible and hazardous both to property and life that it justified severe penalty. We cannot say that it was so excessive and out of proportion to the offense as to be arbitrary and capricious.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1953.