

Award No. 11865
Docket No. CL-13624

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
PACIFIC FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5258) that:

(a) The Company violated the Agreement between the parties effective June 1, 1952, when, on July 17, 1961, it arbitrarily dismissed Mr. C. J. Boone from service based on unproved charge of violation of Safety Rule No. 1078; and

(b) The Company shall now be required to restore Mr. C. J. Boone to service with seniority and all other rights unimpaired and allow compensation for all time lost from July 17, 1961, until restored to service.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date June 1, 1952 (hereinafter referred to as the Agreement) between the Pacific Fruit Express Company (hereinafter referred to as the Company) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is made a part of this dispute.

1. When the incident occurred which gave rise to this dispute Mr. C. J. Boone (hereinafter referred to as the Claimant) was assigned to a position of Head Repairman, El Paso, Texas, hours 12:00 M.N. to 8:00 A.M., rest days Saturday and Sunday.

At about 4:15 A.M. on June 15, 1961, Claimant was notified to repair a bad-order switch box. He proceeded to make the repairs without shutting the power off and, during such repairs, the switch box blew up.

2. On July 10, 1961, Agent R. W. Beehler wrote the following letter to Claimant citing him for alleged violation of Rule 1078 of the Company's Safety Rules:

submission, which can not be foreseen by the Company at this time and have not been answered in this, the Company's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 15, 1961, Claimant was notified to repair a malfunction in an electrical switchbox. He proceeded to make the repairs without shutting the power off and, in the process of making the repairs, the switch box blew up.

The Organization states that the Carrier violated the Agreement between the parties when it dismissed Claimant Boone from service "based on unproved charge of violation of Safety Rule No. 1078 . . ."

Rule 1078 reads as follows:

"Before an employe may work on or handle any electrical apparatus or equipment, including leads or other conductors, any one of which is connected in any way to a source of electric power where the potential of current supplied or derived exceeds 130 volts, he must open the switch or other disconnecting device on the circuit supplying current to such equipment or leads, making certain that all sides of such circuits have been effectively opened, and he must display a sign MEN WORKING ON LINE on the switch or other disconnecting device, and the same workman alone is authorized to remove this sign. Exception: This rule will not apply while working on transmission lines where continuous service is required, nor while changing out or testing storage batteries in a battery charging circuit."

The parties do not dispute the fact that the Claimant was working on a switch box that carried 440 volts. The Organization admits that Claimant did not shut the power off. It is contended, however, on behalf of the Claimant, that the work in question was done where continuous service was required on a transmission line. As such, Claimant was working under the exception to the above quoted safety rule and therefore it was not required that the power be shut off.

The Carrier states that the work in question was not done on a transmission line and that continuous service was not required and therefore Claimant was in direct violation of a safety rule promulgated for his own safety and the safety of fellow employes.

Considered as a whole, the record reveals substantial and material conflicting factual assertions. The record as made does not furnish any basis for resolving this factual conflict. See Awards 4068, 6367, 6430, 8431, 9046 and 9324. What is in issue is a safety rule which, by its very nature, places a high degree of care on those bound to perform under it. We are disposed to give the Carrier broad latitude in determining responsibility for accidents. At the very least the Petitioner has the burden of proving the factual assertions upon which it seeks the allowance of the claim. It would appear that the said Petitioner has failed to sustain its burden of proof.

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 Carrier did not violate its Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.