

Award No. 14864

Docket No. MW-15871

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

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

(1) The discipline assessed B&B Foreman G. W. Evans and B&B Mechanics H. L. Kulhanek and J. J. Russell for alleged "violation of Rule N and Rule 355 of Rules and Regulations for Maintenance of Way and Structures" was without just and sufficient cause and on the basis of unproven charges. (Carrier's File PR-D-213270)

(2) The claim presented by General Chairman J. W. Cope in his letter* of October 26, 1964 should have been allowed as presented because Master Carpenter L. D. Stone and Superintendent O. R. Thurston each failed to give a reason for disallowance of said claim.

(3) Because of the violations referred to in Parts (1) and (2) of this claim:

(a) B&B Foreman G. W. Evans be reinstated to service with seniority, vacation and all other rights unimpaired; his record be cleared of the charges; and he be compensated for the wage loss suffered by him.

(b) B&B Mechanic J. J. Russell be compensated for the wage loss suffered by him and his record be cleared of the charges.

(c) B&B Mechanic H. L. Kulbanek's record be cleared of the charges.

*This letter will be quoted as "Letter No. 1" in the Employees' Statement of Facts.

NOTE: Transcripts of the investigations have been made by the duplicating process by the Carrier. Hence, the Employees will not submit the transcripts with our submission but we shall expect the Carrier to submit full and accurate copies thereof with its submission, as per the last sentence of the first paragraph of "INSTRUCTIONS FOR PREPARING SUBMISSIONS TO THE THIRD DIVISION . . ." dated December 18, 1958.

OPINION OF BOARD: Claimants were members of a Bridge and Building Gang, which was engaged in the extension of a large timber bridge near Havelock, Nebraska. On September 30, 1964 the bridge was destroyed by a fire started by a welding torch used by one of the Claimants to cut off drift bolts between timber caps. Following an investigation, Claimant Evans, the foreman in charge, was discharged from the service of Carrier and the other two Claimants were assessed discipline in the form of suspensions for thirty days, which were actually held in abeyance.

The claim arises from Petitioner's contention that the charges placed against the Claimants were not sustained by the evidence adduced at the investigation held on October 5, 1964.

Petitioner also has raised a procedural issue which must be considered before proceeding to the merits of the dispute. It alleges that the Carrier failed to comply with the pertinent provisions of Section 1(a) of Article V of the National Agreement of August 21, 1954, which provides as follows:

"Should any claim . . . be disallowed, the Carrier shall . . . notify whoever filed the claim . . . in writing of the reasons for such disallowance."

The record discloses that the claim actually was submitted to Carrier's Superintendent with a copy thereof given to the Master Carpenter. Each official of the Carrier replied and declined to allow the claim.

Although the Master Carpenter failed to set forth any reasons for declining the claim, the Superintendent's reply contained the following language:

"After carefully reviewing the transcript of the investigation, I am not agreeable to removing the discipline assessed Messrs. Evans, Russell and Kulhanek and your appeal is respectfully declined."

Petitioner contends that this statement does not constitute a valid reason for declining the claim under the above quoted provisions of the National rule.

This Board has held in previous Awards that compliance with the applicable language of Article V, 1(a) of the National Agreement does not require detailed or specific reasons for disallowance. Awards 11208, 10416, 10368, 9835, 9615. The Superintendent's obvious reason for declining the appeal was his evaluation of the evidence contained in the transcript of the investigation and he was not required to specify particular evidence in support of his position. Therefore, we find no merit in the procedural issue advanced by Petitioner and will consider the merits of the dispute.

Petitioner contends that the discipline assessed the Claimants was based solely upon unsupported charges that they violated Rule N and Rule 355 of Carrier's Rules and Regulations for Maintenance of Way and Structures, which provides as follows:

"RULE N.

Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other.

Employees who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service.

Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property.

RULE 355.

The utmost vigilance is necessary at all times for preventing fires and every employe must exercise care and a due observance of the rules and special instructions for the prevention of same. Every precaution must be taken to prevent the origin and spread of fire. In cases where rules or requirements are not being observed where fire hazard exists it is the duty of any employe to report to his superior any violation or hazards noted."

The thrust of Carrier's position is that Claimants were negligent in the performance of their duties on September 30, 1964 and that the fire which destroyed the timber bridge was a direct result of Claimant's failure to exercise the degree of care required by climatic conditions and the nature of the work.

The record reveals that Carrier had experienced right-of-way fires and other types of fires throughout the summer of 1964. This matter was brought to the attention of Carrier's employes, including the Claimants, who were handling cutting torches around bridges, particularly timber bridges such as the one which burned. Claimants received warnings and instructions through the form of a bulletin concerning the need for care and availability of water when cutting torches were used. Despite a brisk wind and an insufficient water supply immediately available for use, Claimants used a cutting torch on drift bolts between timber caps, one of which contained fresh creosote, instead of a hack saw which would have been safer under the circumstances. Claimants were unable to control the resulting fire which destroyed the bridge and certain equipment belonging to Carrier.

Contrary to Petitioner's contention, we find that the record, including the testimony of the Claimants, substantiates Carrier's assessment of Claimants' responsibility and violation of Rules N and 355 of Carrier's Rules and Regulations for Maintenance of Way and Structures. There is nothing in the record to confirm a charge or sustain a finding of arbitrary or capricious action on the part of the Carrier. Therefore, the claim will be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.