

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24027
Docket Number MW-23928

T. Page Sharp, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The suspension of five (5) days imposed upon Welder G. S. Williams and Welder Helper W. L. Salter for alleged violation of Rule 722 of the Seaboard Coast Line Railroad Company's Operating Rules and Rule 70 of the Seaboard Coast Line Railroad Company's Safety Rules was without just and sufficient cause and on the basis of unproven charges (System File 37-SCL-79-88/12-39(79-44) J3).

(2) Welder G. S. Williams and Welder Helper W. L. Salter shall have their personal records cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: A welder and his helper were grinding a weld of a broken rail when a fire broke out on the welding truck parked some forty to sixty feet away. The result of the fire was that the truck was severely damaged and the welding machine was destroyed.

At the investigation held to determine who had violated the Carrier's safety rules, numerous employees who were present at the time of the fire appeared and testified. No one could directly testify as to the cause of the fire. When asked if he had complied with operating Rule No. 722 and Safety Rule No. 70 the welder answered in the affirmative and explained how he had inspected the gasoline can on the truck to make sure it was safely installed.

To get to the spot of the broken rail the truck had been driven up the track structure, the only way to get to the location. The bank was giving away and truck could not have been parked much further although the welder testified that it could have been driven ten more feet.

Operating Rule 722 and Safety Rule 70 are generalized rules that call for safety in the operation for the prevention of fires. The Carrier found the welder and his helper violative of these rules in that "due to carelessness in placing the truck assigned to them too close to the work being performed by them caused the fire which damaged the assigned company property."

At no point in the investigation did any witness testify that he knew the cause of the fire. A Roadmaster of the Carrier testified that it could have been developed at the other end of the cutting torch tube where it connected to the regulator.

It is pure speculation to state dogmatically that the truck was parked too close and that by inference a spark "jumped" to the truck and caused the fire. The Board was furnished no evidence as to the length of a "jump" of a spark from a grinding machine. There is no evidence to establish that ten more feet from the truck would have made the operation safe from the sparks even assuming arguendo that sparks were the cause of the fire.

There being insufficient evidence to establish any violation of the Operating Rule or the Safety Rule the Carrier has failed to carry its burden of proof and the claim must be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 15th day of November 1982.