

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24234
Docket Number MW-24318

Tedford E. Schoonover, 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 disciplinary demotion of Welder W. A. Roundtree, his disqualification as welder and the suspension of thirteen (13) calendar days imposed upon him was without just and sufficient cause, excessive and unwarranted (System File C-4(13)-WAR/12-39 (80-34) G2).

(2) Mr. W. A. Roundtree be reinstated as a welder with seniority as such unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant entered service and established seniority as laborer and welder helper, August 30, 1965. He was regularly assigned as a welder at the Savannah Rail facility throughout his entire length of service except for a few months.

The incident resulting in the disciplinary action occurred on February 14, 1980. Supervisory personnel inspecting rail already welded discovered Claimant apparently failed to pre-flash welds as required. Disciplinary procedures were initiated on the date following the discovery. The record shows proper procedures were followed insofar as the hearing was concerned.

Notice of hearing was issued with allegations as follows:

"You have been instructed numerous times ... that if it is necessary to torch out and reweld a weld--that the ends of the torch out rails must be flashed off and must be pre-flashed off at least one-half inch or more depending on visual inspection of the torch out ends. This is necessary to square ends of rails and to remove any cracks or other impurities remaining from torch cutting the rail. We have cautioned you on this extremely important matter numerous times. Only in this way are we assured we have a good weld after it has been torch cut.

During the week of Feb. 11, 12, 13 and 14th you had a total of 31 welds; Nine of these had no preflashing and 15 had only one-fourth of an inch.

Your failure to carry out these important instructions cannot be tolerated. As a result of the incident above you are hereby charged with violation of Rule G-1 of SCL RR Co. Book of Operating Rules which reads in part as follows:

'... insubordination ... incompetency ...
will subject the offender to dismissal.'

During the hearing Division Engineer Low defined insubordination as disobedience or failure to submit to authority. He defined incompetence as lacking a qualification or ability or skill to perform a designated operation. Entering these definitions into the record arose over confusion and misunderstanding over the meaning of the terms.

Claimant Roundtree established seniority as a welder helper on April 28, 1966, and as a welder on July 25, 1968. He was regularly assigned in the Rail Welding Plant throughout the entire length of his service except for a few months. He was regularly assigned as First Shift Welder at the plant since April 26, 1978, when the plant was converted to the electric flash butt rail welding process.

During the hearing, Supervisor Ayscue described Claimant as somewhat difficult to instruct because he assumed an attitude of knowing more about the welding process than anyone else, including the Chemetron representatives on duty at the plant. On this point Mr. Ayscue stated:

'Well it has been necessary from time to time to talk with Welder Roundtree about certain functions he has performed and from time to time he would not perform these functions and so I've come to the conclusion that he is just untrustworthy.

His actions in that he has an attitude that he knows more about the equipment and how the work should be performed than the, how he's instructed to do it."

Question by A. C. Low, Jr., Division Engineer:

"To me it means that we have over a period of time confronted Mr. Roundtree with the fact that he was not complying with out instructions, yet he continues to hold the post of welder, holds the position of a welder and makes welds right on, would you explain that please?

A. Well, I have not before had occasion where Mr. Roundtree was actually insubordinate.

Q. In your opinion has he been competent up until the incident on February 14?

A. Apparently."

Further evidence on the matter of Claimant's qualifications as a welder is in the form of testimony of L. Brown, Assistant Supervisor of the plant:

Question by Mr. Low:

"How long has Mr. Roundtree been doing this particular work at the plant, as a welder?

A. Oh, since the welding machine has been there and I believe it was April of 1978.

Q. Who qualified Mr. Roundtree on that particular type welding process?

A. Well we had a learning period, all of us trying to learn together, but a Chemetron representative was there to instruct us all and the Supervisor Mr. Ayscue had made a copy of the Southern Specifications to be our guideline and I'll assume that Mr. Ayscue and I and the foreman and all concerned was in agreement that Mr. Roundtree was qualified to run the machine."

Question by F. E. Wallace, Asst. General Chairman to L. Brown, Assistant Supervisor:

"Then you said in Mr. Roundtree has been and was competent in making welds at the electric butt welds, is that right?

A. Well competence enters into a definition problem if you're saying if Mr. Roundtree is capable of making a good weld I would say yes, but the fact that he made them in a, not a prescribed manner, then I would strongly insist that we cannot competent him to carry out these instructions."

Other instructions by Mr. Low on the matter of competence to Mr.

Brown:

"Q. Incompetence is lacking qualification or ability or skill to perform a designated operation or task, do you agree with this interpretation?

A. Yes sir.

Q. Are you in accord that a person can become qualified to perform a certain operation and then through indifference or other inabilities become incompetent and lack the qualifications to perform this work?

A. That is correct.

- Q. It is entirely reasonable then to assume that a person once qualified is not to be perpetually qualified for any designated operation, is that right?
- A. That's right, a person can be qualified and have the ability to be competent and then through lack of concern or negligence or carelessness or any other reason that he might, or even attitude he can become incompetent.
- Q. I take it that you are in accord with the statement that a person once qualified or competent will not remain competent or qualified perpetually?
- A. That's right."

Question by Mr. Low of Mr. Rucker, Foreman on First Trick:

- "Q. In your opinion is Mr. Roundtree a competent welder?
- A. Well if he would follow instructions yes, but sometimes he gets careless.
- Q. Then you're saying that he is competent, but he sometimes lacks on following instructions, is that what you're saying?
- A. Right."

Mr. Rucker also testified that generally the Claimant produced about as much as anyone else.

During the hearing, Claimant Roundtree admitted he had received instruction in preflashing on rewelds but had not performed the preflashing on the rewelds in question. In explanation, Claimant gave a wide ranging and detailed account of the methods used in making electric rewelds. His knowledge of the proper methods as prescribed in Company rules was clearly shown in his account. He also added, however, that many cases of rails broke in the straightener after all the required weld and reweld procedures had been followed. He even referred to instances where metallurgists had been brought in by the Company to analyze the problem. According to the Claimant they were unable to explain it except that possibly such breaks were caused by the extra heat used in the preheat procedure. He stated that breaks of many rewelds showed it to be inconclusive that preheating made for good welds.

Claimant's failure to follow prescribed procedures was not done as a short cut or maliciously premeditated. Nor was it due to carelessness, negligence or incompetence. Rather, he took this course because of his own feelings that preheating did not necessarily produce a good weld. Mr. Low, Division Engineer, conducting the hearing did not appear to be so much interested in hearing Claimant's

views on rewelds as he was in testimony more directly related to the charges of insubordination and incompetence.

The evidence manifested plainly and clearly Claimant's attitude of knowing more about the welding process than his supervisors or representatives of the Chemetron company. It was this attitude that provided the basis for the charge of insubordination. He appeared reluctant to accept or follow instructions which did not accord with his own views. His insubordination was not so much in the nature of outright defiance and confrontation but rather in doing the job his own way regardless. But it was insubordination nevertheless. Management has every right to demand and expect compliance with reasonable working rules and procedures. Employees acting in defiance should certainly be trained and counseled but, failing to respond to these efforts, disciplinary action is the next step in assuring compliance. The record shows supervision tried on many occasions to counsel with Claimant on the problem.

But the charge of incompetence is another thing. Claimant's long record as a welder and testimony by his supervisors demonstrates the Claimant as a fully qualified welder. The Carrier made an effort, through testimony at the hearing, to show competence can be lost through lack of concern, negligence, carelessness or other reasons. These conditions do not appear to be present in this case. On the contrary, what we have is a fully competent welder with a know-it-all attitude who did his job in his own way in defiance of prescribed rules and procedures. While this supports the charge of insubordination, it does not support the charge of incompetence.

In demoting Claimant to welder helper and suspending him from service for 13 days, Carrier found the charges of insubordination and incompetence fully substantiated. In view of the evidence reviewed above it is the Board's opinion that the charge of insubordination was substantiated but not the charge of incompetence. It must also be considered that we are dealing with an employee of some 14 years service without any prior disciplinary record who was recognized as a competent welder by his supervisors and no prior instance of actual insubordination. The Board believes that his suspension and demotion to welder helper since March 1980 should be sufficient chastisement. It is, therefore, the decision of this Board that Claimant be reinstated as a welder effective with the date of his demotion and that his seniority as a welder be restored, without impairment. Claim for time lost is denied. It is hoped that in the future Claimant will be more receptive to instructions by his supervisors and more cooperative in complying with company rules and procedures.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

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 14th day of March 1983.

