

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25599

Docket Number SG-25813

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company on behalf of acting Signal Foreman R. D. Gatewood, Signalmen H. R. Thatcher and L. L. Barnes that:

(a) Carrier violated the May 1, 1964 Signalmen's Agreement, as amended, particularly the discipline Rule 700, when on August 16, 1983, 12:01 a.m., claimants were suspended from the service of the Missouri Pacific Railroad Company for thirty (30) days without just and sufficient cause and on the basis of unproven charges either before or during an investigation held August 11, 1983, at Fort Worth, Texas, resulting in claimants receiving discipline notices number I 7-4-40 (A), (B) and (C) advising them that their records, as of August 15, 1983, had been assessed with thirty (30) days Actual Suspension for their alleged failure to properly perform their duties, resulting in damage to Bridge 1592 by fire, July 27, 1983, and their alleged violation of Rules and Regulations of the M of W and Structures, General Rules A, C, N (2).

(b) Carrier should now be required to make claimants whole for all lost wages and benefits beginning August 16, 1983 and continue through September 14, 1983, including overtime worked by other members of Signal Gang 1373 during that period, as consequence of the violation. [Carrier file: K 22-5-966]

OPINION OF BOARD: The Organization contends that Claimants were improperly suspended for 30 days without just cause for alleged failure to properly perform their duties July 27, 1983. On that date they had been working on rails which cross a wooden bridge, installing cadweld bonds during the afternoon, leaving this assignment at 4:00 p.m. The last train over the bridge had passed at approximately 11:30 a.m.

A fire was reported on the bridge at 6:00 p.m. and subsequent investigation established two hot spots adjacent to areas where Claimants had been welding. There was slag from welding the bonds on top of the tie plates in areas where the bond wires had been installed.

The bond wires applied to the rail joints are thermal welded and applied by grinding the face of the rail, then using a bonding mold to weld the bonds to the rail. A powder is poured into a mold and ignited with a striker to produce sufficient heat, welding the bond wire to the rail. The flare-up of the bonding equipment produces considerable sparks as well as slag. The sparks and hot slag constitute a fire hazard on the wood bridge.

One hundred fifty bridge ties burned and approximately nine rail links had to be replaced. The evidence showed that the fire had originated from the hot slag that had fallen onto the ties. Discipline was imposed for failure of Claimants to take all necessary safety precautions to prevent a fire. The bridge was open deck pile truss timber with some concrete in the center portion.

Claimants testified that, when they finished work at 4:00 p.m., they walked the bridge to inspect it in order to be sure that fire was not present, looking all around the bridge without finding any evidence of fire. One Claimant testified that he, in the course of his bonding work, used water on areas where they had seen smoke. The Carrier states that "if Claimants had properly followed Company rules, all sparks would have been extinguished and the slag metal cooled."

The record reflects that Claimants checked the bridge before leaving their jobs July 27th. The Board also recognizes that employees are not insurers and cannot properly be subject to discipline unless their conduct results in culpable job performance. However, welding on a wooden bridge calls for a high degree of care and attention to fire prevention. The evidence established that not only did the fire originate in the area where Claimants had been working with the welding materials, but that there was no supervening cause which would relieve them from their responsibility to see that the debris on the rails left from their welding work was in a noncombustible state. Since a fire started not long after they had left the work area, it demonstrates that they were negligent in failing to properly extinguish material that had become combustible as the result of their work. The nexus between their failure to use proper care in the performance of their work and the resulting fire has been established.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.