

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Kansas City Southern Railway Company

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

(1) The thirty (30) days of suspension imposed upon Mechanic R. H. Chamblee for alleged unauthorized cutting of a hole in a plate attached to Speed Swing Crane MW 1044 was unreasonable and unwarranted. (Carrier's File 013.31-312).

(2) The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By letter dated August 29, 1984 the Claimant was notified to appear at an investigation to be held on September 10, 1984. He was charged with alleged violation of Rules wherein the Carrier was investigating Claimant's possible responsibility for cutting a hole in a Speed Swing Crane without authorization. The investigation was held as scheduled and thereafter Claimant was notified by letter of September 26, 1984 that he had been found guilty and was suspended for thirty (30) days.

The record in this case indicates that the Carrier had purchased a new Pettibone Speed Swing Crane a few months before this incident. The Claimant worked as a mechanic with the steel gang that used the crane. In order to check transmission fluid, Claimant had to come to the location and remove a plate held in place by three bolts. A hole was cut in the panel using an acetylene torch so that the transmission fluid could be more easily checked. The hole had rough jagged edges and was later covered with a door.

It is the position of the Organization that the time lost in getting to the Pettibone Crane to check the transmission fluid level greatly reduced productivity. The alteration of the equipment was an aid that did not interfere with the function of the machine or create any safety hazard. Even if such action were found to have been a violation of Rules, the assessed discipline was harsh.

With respect to the merits of the case, the Board finds substantial evidence present to warrant a conclusion of guilt. The Claimant admits that he had no authorization to cut the hole and further admits that he in fact did cut the hole in the Pettibone Crane notifying the Assistant Roadmaster after the fact. Claimant is guilty as charged.

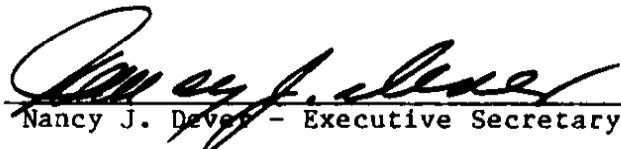
Carrier has a right to expect employees under its authority to act responsibly. Cutting a jagged hole in a nearly new piece of expensive equipment with an acetylene torch shows a clear lack of trustworthy and dependable action on the part of Claimant. Employees have a responsibility to be careful in their actions and under the Rules are "prohibited from altering, nullifying, changing design of railroad property without proper authority...." The Claimant clearly did not have said authority. His actions were irresponsible and marred a new piece of expensive equipment. Since such is the case, there is no basis for judging the discipline assessed by the Carrier as unreasonable, arbitrary or capricious and the Board will not disturb the Carrier's determination in this matter.

A W A R D

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 September 1988.